

GJSK040010712022



Received on	:	08.03.2022		
Registered on	:	09.03.2022		
Decided on	:	13.10.2023		
Duration	:			
		Years	Months	Days

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE
IDAR, DIST. SABARKANTHA**

Criminal Case No.973/2022

Ex. : 34

Complainant : Rajesh Somalal Shah

Aged about :Adult, occupation : Stamp Vendor
Religious : Hindu,
R/o. :Idar, Sreenagar Road No.4, Tal.: Idar
District : Sabarkantha.

// Versus //

Accused : Vijaykumar Perumal Raysigani

Aged about : Adult , Religious : Hindu
Occupation : Commission
R/o. : Idar, Dhaneshwar Society, Near Ananadnagar
Taluka : Idar, District : Sabarkantha.

**Private Complaint under section 138 of the Negotiable
Instrument Act**

Appearance :

Learned Advocate for complainant Mr.V.B.Goswami
Learned Advocate for accused Mr.P.A.Gurjar

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:: JUDGMENT ::

01. The accused is facing trial for commission of the offence punishable under section 138 of the Negotiable Instruments Act. Briefly the facts of the complaint are that the complainant is resides at address title in cause and doing stamp vendor work and accused is being a work of plot purchasing and selling work. So, there was a friendly relationship, accused had borrowed money from complainant Rs.1,20,000/- and assured to return within three months. Afterwards, complainant had demanded that said amount and thereafter as determined, the accused had issued a cheque **No.000017** dtd. **20.11.2021** of his Bank A/c of **H.D.F.C. Bank, Idar Branch** for **Rs.1,20,000/-** in favour of the complainant. Thereafter, complainant had presented the said cheque of **Rs.1,20,000/-** in his Bank, **H.D.F.C. Bank, Idar Branch**, but the said cheque was also not cleared and returned with an endorsement of **"Account Closed"**. The subject cheque was returned by the Bank of the accused on **26.11.2021**, which was received by the complainant on **26.11.2021**. Thereafter, complainant had presented the said cheque again and returned again with an endorsement of **"Account Closed"**. Thereafter, statutory notice in that regard was given by complainant on **01.02.2022**, which was served to accused on **02.02.2022** through R.P.A.D. Thus, the accused has intentionally not paid the dues to the complainant. Hence, the present criminal case came to be filed by the complainant in form of private complainant.

02. The present complaint was registered upon verification and summons was issued to the accused which was duly served to

him. Upon his appearance before this court, requisite copies of the complaint and documents annexed with it were given to the accused and his plea was taken in which he pleaded not guilty and claimed to be tried.

- 03.** The complainant, in support of his case, has produced following evidences:-

Oral Evidences produced by complainant

Serial No.	Name of Witness	Exhibit
01.	Rajesh Somalal Shah	04

Documentary Evidences produced by complainant

Sr. No.	Details of the Document	Exhibit
01	Original cheque No.000017 dtd.20.01.2022	12
02	Return memo	13
03	O/c copy of statutory notice dtd. 01.02.2022	14
04	Postal R.P.A.D. receipt	15
05	Acknowledgment Slip	16

- 04.** The complainant in order to prove his case produced himself as witness PW-1 and submitted his examination in chief, according to Section 145 of N.I. Act at Ex.4 and reiterated the facts stated in the complaint. He relied on the dishonored cheque No.000017 of H.D.F.C., Idar Branch at Ex.12, Return Memo at Ex.13, notice issued by Registered Post A.D. at Ex.14, Postal receipt at Ex.15 and acknowledgment receipt at Ex.16.
- 05.** The right of Further Statement was closed as accused was not remaining present regularly. This court is of the opinion that when plea was recorded and accused pleaded not guilty and claimed to be tried, it was expected of the accused and his

learned advocate to remain present regularly, however, it seems that the accused has tried to take undue advantage by deciding to not remain present, despite knowing that a case of cheque dishonor has been instituted against him. Hence, the arguments were heard from Ld. Advocate of the complainant and upon his written application to pass Judgment of this case, the case was put for pronouncement of Judgment.

06. The accused did not lead any evidence in his defence or produced himself as defence witness. I have heard the argument LA for complainant. The learned advocate for accused remain absent for argument.

07. Following point of determination has arise for my decision:-

Point of Determination

1) *Whether the complainant proves that cheque given by the accused in discharge of the liability was dishonored upon presentation in the bank for payment and the accused person, despite being served with the statutory notice, did not make the payment of the legally enforceable debt within prescribed period and thereby committed the offence under section 138 of the Negotiable Instruments Act ?*

2) *What Order ?*

08. My decision on the above mentioned points of determination is as follows:-

1) *In Affirmative.*

2) *As per Final Order.*

:: REASONS ::

09. Before dwelling into merits of the present case, the statutory provision envisaged in section 138 of the Negotiable Instruments Act is required to be considered. Hon'ble Supreme Court of India has mentioned in the Judgment of ***Jugesh Sehgal v. Shamsher Singh Gogi, (2009) 14 SCC 683***, that

following essential ingredients are required to be fulfilled to constitute an offence under section 138 of the Act.

“9. It is manifest that to constitute an offence under section 138 of the Act, the following ingredients are required to be fulfilled:

(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;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

10. Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under section 138 of the Act.”

- 10.** It is well settled principle of law that the standard of proof in the trial of offence under section 138 of the Negotiable Instruments Act is of preponderance of probabilities. In that regard, the statutory provision envisaged in Negotiable

Instruments Act in section 118 and 139 are required to be looked into, which has been duly considered by this court.

- 11.** It is to be noted here that in the examination-in-chief given by the complainant vide **Ex.4**, it is stated that he is at address title in cause and doing stamp vendor work and accused is being a work of plot purchasing and selling work. So, there was a friendly relationship, accused had borrowed money from complainant Rs.1,20,000/- and assured to return within three months. Afterwards, complainant had demanded that said amount and thereafter as determined, the accused had issued a cheque **No.000017** dtd. **20.11.2021** of his Bank A/c of **H.D.F.C. Bank, Idar Branch** for **Rs.1,20,000/-** in favour of the complainant. Thereafter, complainant had presented the said cheque of **Rs.1,20,000/-** in his Bank, **H.D.F.C. Bank, Idar Branch**, but the said cheque was also not cleared and returned with an endorsement of **"Account Closed"**. The subject cheque was returned by the Bank of the accused on **26.11.2021**, which was received by the complainant on **26.11.2021**. Thereafter, complainant had presented the said cheque again and returned again with an endorsement of **"Account Closed"**. Thereafter, statutory notice in that regard was given by complainant on **01.02.2022**, which was served to accused on **02.02.2022** through R.P.A.D., though accused did not returned the amount within prescribed time period of time.
- 12.** The learned advocate for accused had sought time for cross-examination of complainant on 05/09/2023, which was granted subject to deposit Rs.300/- T.L.S.A.. Thereafter on 08/09/2023 the learned advocate for accused had sought time again for the same, which was rejected and right of cross-examination

was closed on that day. In that scenario, this court is of the opinion that complainant has proved the foundational facts required in the cases instituted for offence under section - 138 of the Negotiable Instruments Act, whereas accused has not been able to rebut the presumptions existing in favour of the complainant under sections 118 and 139 due to his negligence and tendency to unnecessarily prolong trial of case filed under the Negotiable Instruments Act. Hence, I answer issue no.1 in affirmative.

- 13.** I have heard Ld for the complainant. He has requested the court to pass maximum punishment prescribed by the act.
- 14.** So, far as the question of punishment is concerned, prescribed punishment under the N I act, s.138 is extended to 02 year and fine or both. Looking to the fact and circumstances of the case, I pass following order as under.

:: FINAL ORDER ::

- 01.** **The accused-Vijaykumar Perumal Raysigani, R/o. : Idar, Dhaneshwar Society, Near Ananadnagar, Taluka : Idar, District : Sabarkantha** is hereby convicted under section 255(2) of the Code of Criminal Procedure, for the offence punishable under section 138 of the Negotiable Instruments Act.
- 02.** He is sentenced to undergo simple imprisonment of six months and ordered to pay compensation of **Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only)** under section 357(3) of Cr.P.C. to the complainant.

- 03.** Copy of judgment shall be given to the accused free of cost in accordance with Section 363 of Cr.P.C. Period of imprisonment undergone during investigation, inquiry or trial be set off from the sentence awarded to the accused as per section 428 of Cr.P.C.
- 04.** Accused is remained absent today. Hence, issue arrest warrant and conviction warrant against the accused.

Signed and Pronounced in Open Court today on 13th day of October,2023.

Place : Idar

Date : 13.10.2023

(Archit Nilambhai Vora)
Additional Chief Judicial Magistrate
Sabarkantha @ Idar.
Principal Senior Civil Court.
Judge Code No.GJ00849

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