सत्यमेव जयते

Exhibit: **29**

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE AT IDAR, SABARKANTHA

(Presided by: Arun Soni)

CRIMINAL CASE NO.: 1053/2024

Nareshbhai Girdharbhai Patel,
Aged: 51 years, Occupation: Farming,
Residing at Lalpur, Idar,**.......*The Complainant***

Versus

Jatinbhai Rajabhai Parmar
Aged: 44 years,
Residing at Delvada, Khedbrahma, Sabarkantha**........*The Accused***

Appearance:

Complainant: *Learned Advocate Shri G.I Kumpavat/Shri R.S. Devda*

Accused: *Learned Advocate Shri J.N Parmar*

COMPLAINT UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT

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

1. By way of the present Judgment, this court shall dispose of the present complaint filed by the complainant **Nareshbhai Girdharbhai Patel,** (hereinafter referred to as '**complainant**')

against **Jatinbhai Rajabhai Parmar** (hereinafter referred as the '**accused**') u/s 138 of Negotiable Instruments Act, 1881 r/w Section 142 of Negotiable Instruments Act, 1881.

2. The case of the complainant, *in brief,* is that on **28.10.2023** accused bought Groundnuts of **Rupees 4,31,475/-** and on **03.11.2023** bought Groundnuts of **Rupees 2,64,600/-** from complainant and paid only **Rupees 3,88,575/-.** On the demand made by the complainant for payment of the remaining amount of **Rupees 3,07,500/-** the accused issued following cheque to the complainant:

Sr. No	**Bank**	**Cheque No.**	**Amount**	**Date**
1.	Axis Bank Ltd, Khedbramha	031260	3,07,500/-	30/12/2023

Upon being presented on **07.02.2024** for encashment by the complainant with his banker, the aforesaid cheque was returned as dishonored on **09.02.2024** *vide* separate returning memos with reasons ***"Funds insufficient".***

Thereafter, the complainant got served legal demand notice dated **27.02.2024** to the accused demanding the payment of the said cheque amount. It is alleged that despite service of legal demand notice on **28.02.2024,** accused did not make any payment to discharge the liability. Consequently, the present complaint has been preferred by the complainant against the accused.

3. On the basis of complaint and pre-summoning evidence tendered by the complainant, cognizance of the offence U/s 138 NI Act was taken and process was issued against the accused.

4. The notice of substance of accusation was given to the accused on **20.03.2025** *vide* **Exhibit No. 12** to which accused pleaded not guilty and claimed trial. Thereafter, the matter was listed for Complainant Evidence.

5. The complainant has produced the following oral as well as the documentary evidence :-

ORAL EVIDENCE

Sr. No	Name	Description	Exhibit
1.	Nareshbhai Girdharbhai Patel	Complainant	4

DOCUMENTARY EVIDENCE

Sr. No.	Details	Exhibit Number
1.	Receipt of Groundnut 5230 KGs	13
2.	Receipt of Groundnut 3920 KGs	14
3.	Cheque bearing No. 031260	15
4.	Bank Slip	16
5.	Return memo	17

6.	RPAD receipt	18
7.	Copy of notice	19
8.	Post Tracking Report	20

6. After recording the evidence the complainant had given *closing pursis vide* **Exhibit 23.**

7. Thereafter, right of further statement of the accused u/s 351 BNSS was closed due to his absence on **13.06.2025** *vide* **Exh.25.**

8. Accordingly, the matter was listed for final arguments. Submissions were heard on behalf of the complainant. Due to absence of accused right of argument was closed on **03.07.2026.**

9. Following issues are framed for the determination of the present case:

1. Whether the complainant proves that the accused had issued cheque bearing **No.031260** dated **30.12.2023** for a sum of **Rs.3,07,500/--** drawn on **Axis Bank Ltd, Khedbramha** to the complainant as the payment against the legal debt which was dishonored for the reason **“Insufficient funds”** and after receiving legal notice the accused failed to make the legal payment of cheque amount within permissible statutory period and thereby the committed an offence punishable under Section 138 of the

Negotiable Instrument Act, 1881?

2. What Order?

10. Findings:

1. In **Affirmative.**
2. As per the **FINAL ORDER**.

::Reasons for Findings::

<u>ISSUE NO. 1 & 2:</u>

11. Before going into the merits of the case, it is important to glance over the objectives of the Negotiable Instruments Act, 1881(hereinafter as 'NI Act'). NI Act was introduced to enhance the acceptability of the cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient funds and other reasons with adequate safeguards to prevent harassment of honest drawers. Also, the object of said provision of Section 138 NI Act has been well outlined in the case of ***Dalmia Cement (Bharat) Ltd. v. Galaxy Traders and Agencies Ltd. and Ors.*** AIR 2001 SC 676. It has been held in this case that <u>the object of the provision is to ensure both the credibility of cheque as negotiable instrument for use in commercial transaction as well as to ensure the commercial and mercantile activities are carried in a smooth and healthy manner.</u>

Moreover, in the landmark judgment of ***Sanjay Mishra v. Ms. Kanishka Kapoor @ Nikki and Anr.*** 2009 CRI.L.J. 3777, the Hon'ble Apex Court has held that the laws relating to the said Act are required to be interpreted in the light of the object intended to be achieved by it despite there being deviation from general law.

12. For deciding the present case, it is essential to lay down the ingredients of the offence under Section 138 NI Act which are as follows:

12.I. A person must have drawn a cheque on an account maintained by him in a bank.

12.II. The cheque must be drawn for payment of certain amount of money to another person to discharge in whole or in part, any legally enforceable debt or other liability.

12.III. The cheque has been, presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier; the cheque that has been presented to the bank and is returned unpaid by the bank either due to insufficiency of funds or it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

12.IV. 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.

12.V. 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.VI. *Clause (b) of Section 142 of Negotiable Instrument Act, 1881:* such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of Negotiable Instrument Act, 1881.

13. It is pertinent to note that the NI Act is a special enactment and it provides certain presumptions which court has to keep in mind while appreciating the evidence. Therefore, to have a clarity on the point, the presumptions which are raised in NI Act are important to be discussed at hand.

The NI Act raises two presumptions; According to **Section 118** (a) it shall be presumed that every negotiable instrument was made or drawn for consideration. By virtue of this clause, the Court is obliged to presume that the instrument was made for consideration or until the contrary is proved.

According to **Section 139** of NI Act, “it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque for discharge in whole or in part, of any debt or other liability.” Thus, under Section 139 of NI Act, there is a legal presumption that the cheque was issued for discharging an antecedent liability and that presumption can be rebutted only by the person who draw the cheque.

Presumptions, both under Sections 118(a) and 139 of the Act, are rebuttable in nature. The burden is squarely upon the accused to rebut the presumptions and discharge the onus placed upon him to show that the cheque was not against any liability. It is a settled law that for this purpose that the accused is not required to enter the witness box in order to discharge the burden of proof that the law places upon him. In the case reported as ***Rangappa vs. Sri Mohan 2010(5) SCALE 340***, it has been held by a three Judge bench of the Hon'ble Apex Court that consideration attached to a cheque is a matter of presumption and the complainant is not required to prove it beyond reasonable doubt. The question that naturally arises is as to what is the standard of proof that the law requires and which the accused is expected to discharge in order to rebut the presumptions. The aforesaid presumption therefore can be rebutted by the accused. The said rebuttal need not to be in the form of defence evidence. If the case of complainant fails, at it end on the basis of probabilities raised by the accused during course of cross examination, then the aforesaid presumptions, stands rebutted.

However, the accused in order to rebut the presumption(s) against him is not required to conclusively establish his case. The burden of proof on accused in rebutting the presumption(s) is not as high as that of the prosecution. It is also a settled principle that where the accused has discharged the initial burden of rebutting the presumptions; the burden of proof shifts to the complainant and whether or not the accused has discharged the onus of proof placed upon him would depend entirely on the facts and circumstances of the case. Although the Court is under an obligation to raise the presumption contemplated under sections 118, 138 and 139 in every case, where the factual basis for raising the presumption has been established by the complainant, the accused is required to raise a probable defence or rebut such a presumption by leading evidence or bringing such facts on record in the cross examination of the complainant that could make the latter's case improbable. The standard of proof has been held to be preponderance of probabilities and the inference of preponderance of probabilities can be drawn not only from the materials that have been placed on record, but also by reference to the circumstances upon which the accused relies. If the accused is proved to have discharged the initial onus of proof placed on him by showing that the existence of consideration was improbable or doubtful or illegal, then the onus will shift back to the complainant who will then be under an obligation to prove its as matter of fact and failure to do so will dis-entitle him to any relief on the basis of the negotiable instrument.

14. Taking into account the discussion made above, let us peruse the evidence led by the complainant with the discussion on the issue of offence under section 138 of NI Act. The complainant had been examined *vide* **Exhibit 4** wherein he has affirmed to the complaint filed by him. The said contentions duly corroborate the documentary evidence brought on record by the complainant *vide* **Exhibit 13 to 20.**

15. As the complainant was not cross-examined by the accused, let us see 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 in. The burden to rebut the said issue lies on the accused. No cogent evidence is led by the accused to prove anything contrary about the cheque. Thus, this court is of the view that the burden is not discharged by the accused and hence it can be easily presumed that the cheque was given by the accused to the 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 NI Act. The said cheque was dishonored and was returned with the acknowledgement of **"insufficient funds"** on **09.02.2024.** The relevant documents are produced *vide* **Exhibit 15 to 17** which are not contested by the defense making them admissible in evidence.

Moreover, the complainant made demand for the payment of the said amount of money by giving notice dated **27.02.2024** which is produced *vide* **Exhibit 19.** It is also 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 the ingredients of offence under section 138 of NI Act are duly proved by the complainant.

17. For the reason stated above, this court is of the considered view that with the help of the circumstances brought on record, the evidences adduced and the discussion on both the issues, the complainant had established all ingredients as per section 138 of NI Act, Hence this court find the accused guilty of the offence punishable under section 138 of NI Act. The matter is kept for hearing for quantum of sentence.

30/07/2026

(Arun Soni)
Additional Chief Judicial Magistrate, Idar
GJ01422

<u>Hearing On Quantum of Sentence</u>

18. Heard the learned Advocate for the complainant. The accused is not present and thus right of hearing for quantum is closed for accused. The learned Advocate for the complainant has submitted before this court that the prosecution has proved the case beyond all reasonable doubts and therefore prayed for harsh punishment as per the law. He has also prayed for compensation to the complainant.

19. I have heard the complainant at length for deciding the quantum of punishment. It seems to this court that the offence under section 138 of NI Act is a serious offence and is of the nature that it may gradually increase disbelieve in the society about commercial transactions. It is very important for the growth of a society that the commercial transactions should take place easily and with the credibility of negotiable instruments. As far as the quantum is concerned, it seems to this court that severe punishment should be levied upon the accused to give proper justice to the complainant, after keeping in mind the amount of cheque, and to establish healthy environment for the credibility of Negotiable Instruments. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. Hence, following order:

-:: O R D E R ::-

1. The accused, namely, **Jatinbhai Rajabhai Parmar, Residing at Delvada, Khedbrahma, Sabarkantha** is hereby convicted under **Section 278(2) of BNSS** for the offence punishable under **Section 138 of the Negotiable Instruments Act, 1881.**
2. The accused is hereby sentenced for simple imprisonment for **03 months** with **Rs. 4,00,000/- (Rupees Four Lacs Only)** as fine. For the non-payment of the said fine amount, the accused shall have to undergo simple imprisonment of **01 month**, separately.
3. Out of the total fine amount, a sum of **Rs. 3,50,000/- (Rupees**

Three Lac Fifty Thousand Only) shall be paid to the complainant as compensation as per **Section 395 of BNSS,** and the remaining amount i.e **Rs.50,000/-(Rupees Fifty Thousand Only)** shall be credited to the State. For the non-payment of the said compensation amount, the accused shall have to undergo simple imprisonment of **01 month**, separately.

4. As the accused is not present in Court when he is sentenced to such imprisonment, a warrant for his arrest, as per **Section 458(2) of BNSS**, for the purpose of forwarding him to jail, be issued and sent to the police station where the accused reside. Any period undergone in judicial custody by the accused shall be liable to be set-off as per **Section 468 of BNSS.**
5. A copy of this judgment to be given free of cost to the accused, whenever he appears or brought before the Court, as per **Section 404(1) of BNSS.**

Signed and pronounced in the open Court on this **30th** day of Month **July** of Year **2026.**

Place: Idar

Date: 30/07/2026

(Arun Soni)
Additional Chief Judicial Magistrate
GJ01422