

GJSK040034362024



Received on	:	21.12.2024		
Registered on	:	21.12.2024		
Decided on	:	06.07.2026		
Duration	:	01	06	26
		Years	Months	Days

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE IDAR,
DIST. SABARKANTHA.
Criminal Case No. 1198/2025**

Complainant : **Patel Vinubhai Kuberbhai**
Age : 61 years, Occupation - Agriculture
r/o: at Po. Pratappura, Ta. Idar, Dist. Sabarkantha

// Versus //

Accused : **Bhambhi Rajeshkumar Mohanbhai**
Age : 45 Years, Occupation - Contractor
r/o: at Po. Kava, Ta. Idar, District Sabarkantha

A Private Complaint under section 138 of the Negotiable Instruments Act

Appearance :

Learned Advocate for complainant Mr. S. L. Patel

Learned Advocate for accused Mr. R. G. Chauhan

:: JUDGMENT ::

01. The accused is facing trial for commission of the Offence Punishable under Section 138 of the Negotiable Instruments Act. The brief facts of the complaint are that the complainant has been retired from the BSNL and doing business of agriculture. Accused is doing business of contractor. Complainant and accused is living near about village. So having the good relations between them. In the month of January 2020 accused had

demanded an amount of Rs. 2,25,000/- from the complainant and assured to return within six months. So, complainant had given an amount of Rs. 2,25,000/- to the accused. When the complainant asked for the payment. For the payment of that amount, accused had issued a cheque bearing no. 103745 dated 24.12.2020 drawn on the account maintained by him in HDFC Bank, Idar Branch, bearing amount of Rs. 2,25,000/- to the complainant, at that time complainant was present. Thereafter, the complainant had present the said cheque in the back but the said cheque had return without received. So, complainant had file a Criminal Case No. 474/2021 of Negotiable Instruments Act against the accused, during the running case, accused had doing settlement and issued a cheque no. 030005, on dated 30.08.2024 of Rs. 1,00,000/- and withdraw the case before the court and the withdraw pursis had produced at Exh. 31. Therefore, accused had issued a cheque bearing no. 030005 dated 30.08.2024 drawn on the account maintained by him in The Sabarkantha Bank, Idar Branch, bearing amount of Rs. 1,00,000/- to the complainant, at that time complainant was present. Thereafter, the complainant had presented the said cheque in Sabarkantha Bank , Idar Branch for encasement on dated 08.10.2024. Thereafter, that cheque was dishonored upon presentation by the complainant in the bank. The Return memo was received by the complainant on 09.10.2024 with endorsement of **"Funds Insufficient"**. So, the statutory notice and a simple notice in that regard was given to the accused on 07.11.2024 through his Ld. Advocate by post which was served to the accused on 08.11.2024. However, accused had not returned the money within fifteen days to complainant. Hence, the present criminal case came to be filed on dated 21.12.2024 by the complainant under Section 138 of the Negotiable Instruments Act in the form of private complainant.

02. The 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 by this court vide Ex.08, 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

Sr No.	Name of Witness	Exh.
01.	Patel Vinubhai Kuberbhai	4

Documentary Evidences produced by complainant

Sr. No.	Details of the Document	Exh.
01	Original Cheque No. 030005, dtd. 30.08.2024	09
02	Return Memo, dtd. 09.10.2024	10
03	Return for reason	11
04	O/c Demand Notice, dtd. 07.11.2024	12
05	Postal Slip	13
06	Track Consignment	14
07	Withdraw Pursis	31

04. The complainant in order to prove his case produced his affidavit in nature of examination-in-chief according to Section 145 of N.I. Act at Ex.4 and stated that the complainant is doing business of agriculture. Accused is doing business of contractor. Complainant and accused is living near about village. So having the good relations between them. In the month of January 2020 accused had demanded an amount of Rs. 2,25,000/- from the complainant and assured to return within six months. So, complainant had given an amount of Rs. 2,25,000/- to the accused. When the complainant asked for the payment. For the payment of that amount, accused had issued a cheque bearing no. 103745 dated 24.12.2020 drawn on the account maintained by him in HDFC Bank, IdarBranch, bearing amount of Rs. 2,25,000/- to the complainant, at that time complainant was present. Thereafter, the complainant had present the said cheque in the back but the said

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05. The Right of Further Statement and the right of presentation of evidence on an accused side was closed with passing an order below Exh.23 as accused was not remain 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 decid-

ing 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 submission to pass Judgment of this case, the case was put for pronouncement of Judgment. Further more it is pertinent to note that an accused did not lead evidence in his defence or produced himself as defence witness and also not produced himself for an argument so the right of an argument by an accused side was closed with passing an order below Exh.24.

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

Point of Determination

- 1) *Whether the complainant proves that cheques given by the accused in discharge of the liability were 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 ?*

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

- 1) *In Affirmative.*
- 2) *As per Final Order.*

:: REASONS ::

08. 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.”*

09. The Hon'ble Supreme Court of India pleased to discuss aforesaid aspect in detail in the decision reported in, ***Rangappa Vs. Mohan reported in AIR 2010 SC 1898= 2010 AIR (SCW) 2946***, It is relevant to reproduce said observations; “Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the court in favour of the complainant. The presumption referred to in Section 139 of the NI Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established by the accused in order to rebut the presumption is different from each case under the given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the court. *The defence raised by the accused was that a blank cheque was lost by him, which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered.....”*
10. Hon'ble Supreme Court ***Rohitbhai Jivanlal Patel V/S State Of Gujarat Air 2019 Supreme Court 1876*** In the order of Hon'ble Supreme Court. *In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the Trial Court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the Trial Court had been at variance with the principles of presumption in law.*

After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant. The aspect relevant for consideration had been as to whether the accused-appellant has brought on record such facts/material/circumstances which could be of a reasonably probable defence.

11. 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.
12. 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. The accused has remain not paid an amount of Rs.1,00,000/- per Exh. 09 to 14. Hence, 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 years and fine or both. Looking to the fact and circumstances of the case, I pass following order as under.

:: FINAL ORDER ::

01. The accused- **Bhambhi Rajeshkumar Mohanbhai, r/o at Po. Kava, Ta. 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 two years and **ordered to pay compensation of Rs. 1,00,000/- (Rupees One Lac Only)** 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 if any 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 06th day of July-2026.

Place : Idar

Date : 06.07.2026

(Dr. S. D. Kapadia)

Additional Chief Judicial Magistrate

Sabarkantha @ Idar.

Judge Code No.GJ01356

S S Sharma