सत्यमेव जयते

Exhibit: **22**

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

(Presided by: Arun Soni)

CRIMINAL CASE NO.: 3150/2025

Sheetalben Manabhai Thori,

Aged: 32 Years, Occupation: Business,
Residing at Umedgarh, Ta. Idar,

Sabarkantha**..*The Complainant***

Versus

Thori Jitubhai Laxmanbhai,

Aged: 43 Years,

Residing at Nava Champalpur, Ta. khedbramha,

District Sabarkantha**..*The Accused***

Appearance:

Complainant: *Learned Advocate Shri M.J. Bhatt*

Accused: *Learned Advocate Shri M.G. Makwana*

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 **Sheetalben Manabhai Thori** (hereinafter referred to as '**complainant**') against **Thori Jitubhai Laxmanbhai**(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,* on **17.05.2025** the accused has obtained a friendly loan for **Rs.1,60,000/-** from complainant for the tenure of 3 months. The accused has agreed to repay the availed loan amount. It is submitted that, subsequently the accused become defaulter in the matter of repayment of the availed loan amount. On the demand made by the complainant for repayment of the said loan amount, towards discharge of the liability, the accused issued following cheque to the complainant:

Sr. No	**Bank**	**Cheque No.**	**Amount**	**Date**
1.	SBI, Himmatnagar	361526	1,20,000/-	17-07-2025

Upon being presented for encashment by the complainant with his banker, the aforesaid cheque was returned as dishonored *vide* separate returning memos dated 1**7.07.2025** with reasons ***"Funds Insufficient".***

Thereafter, the complainant got served legal demand notice dated **23.07.2025** to the accused demanding the payment of the said cheque amount. It is alleged that despite service of legal demand notice on **28.07.2025,** 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 **02.12.2025** *vide* **Exhibit No. 08** 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.	Sheetalben	Complainant	4

DOCUMENTARY EVIDENCE

Sr. No.	Details	Exhibit Number
1.	Original Cheque	10
2.	Return memo	11
3.	Copy of notice	12
4.	Postal Slip	13
5.	Acknowledgment	14

6 After recording the evidence the complainant had given *closing pursis vide* **Exhibit 19.**

7 Thereafter, further statement of the accused u/s 351 BNSS was recorded on **30.07.2026.**

8 Accordingly, the matter was listed for final arguments. Submissions were heard on behalf of the complainant and Accused.

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

1. Whether the complainant proves that the accused had issued cheque to the complainant as the payment against the legal debt which was dishonored for the reason ***“Funds Insufficient”*** 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 **Negative.**
2. As per the **FINAL ORDER**.

::Reasons for Findings::

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

11 In order to establish the offence under Section 138 of NI Act, the prosecution must fulfil all the essential ingredients of the offence, as highlighted below:-

11.1 The cheque was drawn by a person on an account maintained by him/her for payment of money and the same is presented for payment within a period of 3 months from the date on which it is drawn or within the period of its validity;

11.2 The cheque was drawn by the drawer for discharge of any legally enforceable debt or other liability;

11.3 The cheque was returned unpaid by the bank due to either insufficiency of funds in the account to honour the cheque or that it exceeds the amount arranged to be paid from that account on an agreement made with that bank;

11.4 A demand of the said amount has been made by the payee or holder in due course of the cheque by a notice in writing given to the drawer within thirty days of the receipt of information of the dishonour of cheque from the bank; and

11.5 The drawer fails to make payment of the said amount of money within fifteen days from the date of receipt of notice.

12 The ingredients of the offence were summarized in fairly similar terms in a judgment of a two judge Bench of Hon'ble Apex Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan AIR 1999 SUPREME COURT 3762,** Justice K T Thomas observed: *"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of 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 the notice."*

13 In order to prove the aforesaid ingredients, the complainant has proved the following:

13.1 The complainant has proved the original cheque in question i.e. **Ex. 10,** which the accused has not disputed as being drawn on his account. It is not disputed that the cheque in question was presented within its validity period.

13.2 The cheque in question was returned unpaid *vide* return memo **Ex. 11** due to the reason, ***"Funds Insufficient".*** The same is also not disputed by accused.

13.3 Complainant has proved on record legal notice **Ex. 12** and postal receipts **Ex. 14**.

14 As such, on the basis of the above, the first, third, fourth and fifth ingredient of the offence under Section 138 NI Act as discussed in aforesaid paragraph no. 11 stands proved against the accused.

15 As far as the proof of second ingredient in paragraph no. 11 is concerned, the complainant is required to prove that the cheque in question was issued by the accused and it was drawn by the drawer for discharging a legally enforceable debt. The accused has not disputed his signature on the cheque in question. Thus, presumption under section 118(a) and under section 139 of NI Act arises against the accused. Unless the contrary is proved, it shall be presumed that the cheque in question was drawn for a consideration and that the complainant received the cheque in question in discharge of a debt/liability from the accused. In order to rebut the presumptions, the burden of proof shifts to the accused to prove on a preponderance of probabilities that there was no liability for the amount of cheque in question.

16 Therefore, in the present matter, the onus of proof is now upon the accused to raise a probable defence and to rebut the presumption of the existence of a legally recoverable debt arisen in favour of the complainant. It is now to be examined as to whether the accused has brought any material on record for dislodging the presumption which meets the standard of preponderance of probabilities.

17 In the present case, the accused has not disputed his signature upon the cheque in question. As per the scheme of the NI Act, once the accused admits signature on the cheque in question, certain presumptions are drawn, which result in shifting of onus. Section 118(a) of the NI Act lays down the presumption that every negotiable instrument was made or drawn for consideration. Another presumption is enumerated in Section 139 of NI Act. The provision lays down the presumption that the holder of the cheque received it for the discharge, in whole or part, of any debt or other liability. The combined effect of these two provisions is a presumption that the cheque was drawn for consideration and given by the accused for the discharge of debt or other liability. Both the sections use the expression "shall", which makes it imperative for the court to raise the presumptions, once the foundational facts required for the same are proved. So far as the facts of liability is concerned, in view of mandatory presumption of law as discussed above, if any cheque has been produced by the complainant bearing the signatures of the accused, there cannot be any inherent lacuna in the existence of the liability. But then definitely, accused can point loop holes in the story of the complainant by impeaching the credit of the witness during his cross examination. The accused can discharge his burden by demonstrating the preponderance of probabilities coming in its way. Learned. Counsel for the accused has cross examined the complainant and during the cross examination, complainant admitted that t**he accused had already paid the outstanding amount on 01.06.2025.**

18 The Hon'ble Supreme Court has in the case of **Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr. Criminal Appeal No. 1497 of 2022** has observed that "For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation". Perusal of the cross examination of complainant reveals that no legally enforceable debt was due from the accused. Hence, the offence under Section 138 of the NI Act would not deem to be committed as the cheque in question does not represent the enforceable debt at the time of encashment.

19 Thus, in view of the totality of the circumstance and the settled legal positions as discussed above, the case attempted to be built by the complainant, appears to be suffering from fatal infirmities so much so, it goes directly to the root of the case and shakes the very edifice on which the case of the complainant rests. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail.

20 In light of the aforesaid discussion the ingredients of offence under Section 138 of the NI Act are not fulfilled in the present case. Therefore, the Issue No.1 is answered accordingly in negative and answer the Issue No.2 by passing the following order:

:: O R D E R ::-

1) The accused **Thori Jitubhai Laxmanbhai, resident of Navachampalpur, Tal. Khedbramha, Dist.Sabarkantha,** is hereby acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2) The accused is ordered to produce a personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) in compliance of Section 481 of BNSS.

Signed and pronounced in the open Court on this **20th** day of Month **August** of Year **2026**.

Place: Idar

Date: 20/08/2026

(Arun Soni)

Additional Chief Judicial Magistrate

GJ01422