

GJTP020015552025 	 सत्यमेव जयते	Registered on	30-04-2025
		Decided on	31-07-2026
		Duration DD MM YY	

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, TAPI AT VYARA Present : M.I.N. SHAIKH, C.J.M., Tapi at Vyara [Date of the judgment 31.07.2026] [Criminal Case No. 1358/2025] (Details of FIR/Crime and Police Station)	
COM-PLAINANT	CHIRAG BHARAT AGRAWAL AUTHORIZED PARTNER OF LAXMI BUILDCON A PARTNERSHIP FIRM. Aged about : 32 years, occupation: Business Business Place : Shop No.5, Tulsi Point, Tadkuva, Vyara, Dis Tapi. 394650.
REPRE-SENTED BY	Advocate Mr. R.H.Agrawal
ACCUSED	SANJAYKUMAR PARASMAL SHAH PROPRIETOR OF NAKODA HARDWARE Age: 45 Years, occupation: Business Address :HN 4327, R B Plaza, Near HP Petrol Pump, Valod-394640, Dis. Tapi.
REPRE-SENTED BY	Learned advocate Mr.U.R.Prajapati

FORM-B

Date of Offence	-----
Date of FIR	-----
Date of Charge-Sheet	-----

Date of Framing of Charges/Plea	21.06.2025
Date of Commencement of Evidence	-----
Date on which judgment is reserved	-----
Date of the Judgment	31.07.2026
Date of the Sentencing Order, if any	31.07.2026

ACCUSED DETAILS

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offence Charged With	Whether Acquitted or Convicted	Sentence Imposed	Period of detention undergone during trial for the purpose of Section 428, Cr. P.C.
1.	Sanjaykumar Parasmal Shah Proprietor Of Nakoda Hardware	-----	----- -	138 N.I. Act	Convicted	01-year	-----

FORM-C

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

A. Prosecution

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW-1 Exh.4	CHIRAG BHARAT AGRAWAL AUTHORIZED PARTNER OF LAXMI BUILDCON	Complainant himself

B. Defence Witness, If any:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
DW-1 Exh-	-	other witness
DW-2	-	-

C. Court Witnesses, if any:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
CW-1	-	-
CW-2	-	-

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**A. Prosecution**

Sr. No.	Exhibit Number	Description
1	10	Original Authority Letter issued by complaint firm
2	11	Office Copy of Invoice NO.1002
3	12	Office Copy of E-way Bill
4	13	Original cheque
5	14	Bank Return Memo
6	15	O/c copy of statutory notice
7	16	Slip of RPAD
8	17	Copy of online track consignment

B. Defence

Sr. No.	Exhibit Number	Description
01.	Exhibit	-
02.	Exhibit	-
03.	Exhibit	-

C. Court Exhibit

Sr. No.	Exhibit Number	Description
01.	Exhibit C-1/CW1	--
02.	Exhibit C-1/CW2	--

D. Material Objects

Sr. No.	Material Object Number	Description
01.	MO 1	-
02.	MO 2	-

:: JUDGMENT ::

(Delivered on this 31th day of July , 2026)

Introduction :

01. The complainant has filled private complainant under Section 138 of the Negotiable Instrument Act, 1881 (in short NIA) before the court of Chief Judicial Magistrate.

Case Of The Complainant:-

02. The short fact, of the present complaint is as under :
- The complainant is a partnership firm and is the authorized distributor of ACC Cement, German TMX and Jindal TMT, and is engaged in the business of selling cement and TMT bars. The complaint has been filed and signed by Chirag Bharat Agrawal, an authorized partner of the complainant firm, on the strength of an Authority Letter dated 01.04.2025 issued in his favour. The accused is a propri-

etary firm engaged in trading of building materials, and Sanjaykumar Parasmal Shah, its proprietor, is stated to be authorized to conduct its day to day affairs including issuance of cheques and financial transactions.

It is the case of the complainant that the accused had approached the complainant for purchase of German TMX TMT bars of 8mm, 10mm and 12mm sizes, pursuant to which the complainant supplied the said material and raised Invoice No. 1002 dated 12.12.2024 for an amount of Rs. 6,77,280/-. The material is stated to have been delivered under cover of an e-way bill and received by the accused without any complaint or dispute. Though the accused was liable to make payment immediately upon supply, no payment was made. It is further the case of the complainant that after repeated follow up, the accused issued Cheque No. 001020 dated 21.03.2025, drawn on ICICI Bank, Vyara Branch, for the said amount, towards discharge of the outstanding liability, assuring that the same would be honoured on presentation.

The complainant deposited the said cheque in its account with Kotak Mahindra Bank Limited, Vyara Branch, for clearance, however the same was returned unpaid vide bank memo dated 25.03.2025 with the remark "funds insufficient". Despite intimation, the accused failed to make payment. The complainant, through his advocate, thereafter issued a statutory legal notice dated 05.04.2025, calling upon the accused to pay the cheque amount within

the stipulated period, which notice was served upon the accused on 08.04.2025. The accused, however, failed to make payment of the cheque amount despite service of the notice and expiry of the statutory period, and thus it is alleged that the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It is submitted that the complainant has complied with all the procedural requirements contemplated under Section 138 of the said Act, and has accordingly filed the present complaint praying, inter alia, for issuance of process against the accused.

Upon filing the present complaint and after its due verification, process were issued against the accused.

Appearance and Plea

- 03** Upon service of process accused was present before this court. The particulars of the offence of which he brought before this court is stated and also asked to him that whether he pleads guilty or has any defence to make, but accused pleaded not guilty and hence, matter is being proceeded for the evidence of prosecution.

Evidence of the complainant :

- 04** To bring home the guilt of the accused, Complainant has examined himself as PW-1 and relied upon the documents details of which are given in the aforementioned chart vide Form C.
- Statements of accused under Section 313 of Cr.P.C/ under Section 351 of the B.N.S.S. :**
- 05** On incriminating aspect in the complainants evidence and

upon considering the principle of fair trial, the matter kept for the further statement of the accused under Section 313 of Cr.P.C. and accused has not denied evidence adduced by the complainant by his *Absencia* and therefor right of the Further statement is closed by this court below **Exh : 30**.

06. ARGUMENT OF THE LEARNED ADVOCATES OF THE PARTIES:-

After closure of evidence, learned advocate for the complainant has orally argued in support of the evidence adduced by the complainant and has prayed to this court to allow his complaint and pass necessary orders seeking the conviction of accused. He further more submitted that accused has not denied his signature on cheque and also not denied that said cheque is not issued from his account maintained by **ICICI Bank**. He further more submitted that the accused has not attempted to place anything on record upon which the court may presume against the complainant and therefore, complaint is required to be allowed by considering and by presuming the facts in favour of the complainant. He further more submitted that the complainant has proved theirs legal debt, therefor he prays to convict to the accused .

Wherein the Other side, the Id. Advocate for the accused has submitted that the complainant has not proved legal debt and therefore, an accused cannot be convicted on basis of the presumption. The Id. Advocate for the accused has vehemently submitted that accused has rebutted presumption during the

course of cross examination of the complainant and therefore, he sought for acquittal of the accused any arguments on his behalf therefor the right for argument was closed.

07. *Point of Determination*

1) *Whether the complainant proves that cheque given by the accused in discharge of the legally enforceable debt and other 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 ?*

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

1) *In Affirmative*

2) *As per Final Order*

- : *Reasons for the Decision* :-

09. Before advertng to the discussion and conclusion, I have noted the relevant provisions of Section 118 and 139 of the Negotiable Instrument Act, 1881, which may assist this court in fair and just determination of the present case.

Section 118 :-

Presumptions as to negotiable instruments; (a) of consideration; (b) as to date; (c) as to time of acceptance; (d) as to time of transfer; (e) as to order of endorsements; (f) as to stamp; (g) that holder is a

holder in due course.

Until the contrary is proved, the following presumptions shall be made

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration

(b) that every negotiable instrument bearing a date was made or drawn on such date

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity

(d) that every transfer of a negotiable instrument was made before its maturity

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon

(f) that a lost promissory note, bill of exchange.

Section 139 : Presumption in favour of holder;

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

10. Its beneficiary to refer judgment of the **Hon'ble Supreme Court** in case of **M.S. Narayan Menon V/s State of Kerala (2006) 6 SCC 39** wherein the Hon'ble Supreme

Court has explained the principle of presumptions in detail by referring provisions under Section 118 and Section 139 of N.I. Act. In the said judgment, Hon'ble Supreme Court has also explained the proof of determination under which, accused can rebut the presumption which is given in favour of the complainant and therefore, it would be appropriate to quote very relevant paras which is useful to highlight the sequence of the present case and to match the facts of the present case.

Para 29. *Presumptions both under Sections 118(a) and 139 of the Act are rebuttable in nature.*

Para 31. *In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words 'proved' and 'disproved' have been defined in Section 3 of the Evidence Act (the interpretation clause) to mean :- **"Proved"** - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. **Disproved** - A fact is said to be disproved when, after considering the matters before it the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the*

circumstances of the particular case, to act upon the supposition that it does not exist."

Para 32. *Applying the said definitions of 'proved' or 'disproved' to principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.*

11. To prove guilt of the accused the complainant has submitted chief examination on oath vide Exh.4. The accused has cross examine of the complainant during the cross examine, the complainant has admitted that he has not produced any evidence to suggest that accused is a owner of the Nakoda Hardware, and said transaction has not reflected in their income tax return. Wherein, other facts is denied by the complainant. Upon perusing the cross examination of the complainant, its appears that the accused has not rebutted presumption.

With this background, I would like to go with the

documents referred and accepted as above and considering the E-way bill vide Exh. 12 it appears that the complainant has issued Invoice bill in the name of Nakoda Hardware on dated 15.12.2024. The complainant has also prove that the cheque vide Exh.13 was issued by the accused against legally enforceable debt with regards to vide **Exh.-11 i.e. Tax Invoice. Furthermore**, the accused has not denied a signature made in cheque vide Exh.13. The complainant has also proved that the cheque is deposited in the bank for honour and returned unpaid with the endorsement “**funds insufficient**” at **Exhibit 14** and subsequently, **statutory notice at Exhibit 15** was given to accused at the correct address, but the accused failed to make the payment within time prescribed in the notice. Therefore, this court has come into the conclusion that the complainant has proved three elements under the N.I. Act are : like as i.e. cheque deposited, cheque return endorsement and statutory notice and non payment of the cheque amount. Upon perusing **return memo** it appears that the official mark as well as authorized signature is found at **Exh : 14** , therefore it shall be presumed that cheque has been dishonored unless and until such fact is disproved. Hence there are a statutory presumption govern under sec 146 of the act with regards to dishonored of the cheque. Upon considering aforesaid evidences it appears that **cheque vide Exh : 13** was dishonored due to “fund insufficient” balance in the bank account of accused on the date of presentation of cheque.

12. On bar reading of section 118, 139 of the N.I. Act it appears that both presumptions called as statutory presumption and rebuttable presumption. Upon perusing evidence of the complainant, accused has not attempted to place anything on record of this court upon which the court may presume against the complainant and therefore, complaint is required to be allowed by considering and by presuming the facts in favour of the complainant. So far as burden of proving is concerned, there is a provision under the Indian Evidence Act, 1872 to prove the case as unlike the offence under IPC where strict proof is required to prove the case beyond reasonable doubt. In the case under Section 138 of N.I. Act, preponderance of probabilities word replace the earlier. It is also required to be mentioned that the preponderance of probabilities can be attributed only by cross-examining the complainant in first part and by examining the accused at the stage of defence not only on facts but also on documents. However in this matter, accused has failed to re-butte said presumption under the N.I. Act.
13. Therefore, relying upon principle establish by the Hon'ble Apex Court in above cited case law, The view of this court that the accused can rebut presumption by way of cross-examination to the complainant, but the accused has not rebutted the presumption in his favor and also not rebutted the burden which is lying in favour of the complainant and make himself liable for the judicial consequence in terms

of the punishment as he had been given an ample and just opportunity on the part of fair trial.

14. Furthermore, as discussed in issue No. 1, the complainant has proved all essential elements of Section 138 of the Negotiable Instruments Act. In the judgment of the **Honourable Apex Court** in the case of *Varkey V/s State, (1989 CrLJ 2357)*, it has been established that at the time of passing the order of conviction by Magistrate in a summons triable case under Section 255(2), the accused is not required to be heard and as the case on hand being the summons triable case, the accused is not heard about the sentence.

It is required to be noted the accused is absent without any sufficient and cogent reason during the trial. Furthermore, the matter is kept for judgment but, today accused not present before this Court. To this effect, taking into consideration the observation made by the **Hon'ble High Court of Gujarat** in the case of *Sharad Jethalal Savla v. State of Gujarat, Criminal Misc. Application No. 19862 of 2015*, that “pronouncement of judgment in the absence of the accused cannot render the judgment invalid under Section 353 of Code of Criminal Procedure and as per section 418 of Cr.P.C., warrant can be issued for execution of sentence”. Further more, this court has also taken into consideration the legal principle recently laid down by the **Hon'ble High Court of Gujarat** in the case of *Manoj Vasudev Sompura v. State of Gujarat, Petition No. 6724 dated 15.09.2023* on this issue.

15. Therefore discussing the above facts and law related to the present case on hand, This court is come into conclusion that the complainant has proved issue no 1 therefore, answer of Issue/ No.1 in the affirmative and so far as question No.2 is concerned, final order is hereby passed accordingly as under :

:: FINAL ORDER ::

01. The complaint is allowed.
02. Present accused **SANJAYKUMAR PARASMAL SHAH PROPRIETOR OF NAKODA HARDWARE** Age: 45 Years, occupation: Business Address :HN 4327, R B Plaza, Near HP Petrol Pump, Valod-394640, Dis. Tapi. **is hereby convicted** under Section 255(2) of the Code of Criminal Procedure/ Section 278 (2) of the BNSS-2023, for the offence punishable under Section 138 of the Negotiable Instruments Act.
03. He is sentenced to undergo simple imprisonment of **01 (one) year** and ordered to **pay compensation of Rs.6,77,280/- (Rupees Six Lakh Seventy-Seven thousand Two Hundred Eighty only)** to the complainant. In default, he shall undergo further simple imprisonment of 03 (three) months.
04. The bail and bonds shall stand cancelled.
05. Copy of judgment shall be given to the accused free of cost in accordance with Section 363 of Cr.P.C/Section 404 of the BNSS-2023. Period of imprisonment / detention

undergone during investigation, inquiry or trial be set off from the sentence awarded to the accused as per Section 428 of Cr.P.C/Section 468 of the BNSS-2023.

06. When judgment is pronounced accused was not present before this Court, hence, to be issue non-bailable warrant against the accused under section Section 418(2)/ Section 458 (2) of the BNSS-2023 read with Section 70 of the Code of Criminal Procedure/Section 72 of the BNSS-2023, for further proceeding as per order.

Signed and Pronounced in Open Court today on 31th July 2026.

Place :Tapi at Vyara
Date : 31.07.2026

B.S.Panwar

Proceedings closed.....

(M.I.N. Shaikh)
Chief Judicial Magistrate
Tapi at Vyara
Judge Code No. GJ01327