



C.C. NO.2557/2024

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**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 24.07.2026]

[Criminal Case No. 2557/2024]

(Details of FIR/Crime and Police Station)

Complainant	Mayurkumar Rajubhai Patel P/A Holder Jignesh Ashokbhai Lumbhani P/O Aai Shree Khodiyar Jewelers . Aged about : 29 years, occupation: Service Residence :Bhandarivad, Virpor, Valod, Dis. Tapi.
Represented By	Advocate Mr. S.B.Pancholi
Accused	Sagarkumar Jayeshbhai Patel Age: 23 Years, occupation: -- Residence : Neva Faliyu, Kalkva, Valod, Dis. Tapi.
Represented By	Learned advocate Mr. G.B.Bhoi

FORM-B

Date of Offence	-----
Date of FIR	-----
Date of Charge-Sheet	-----
Date of Framing of Charges/Plea	23.09.2024
Date of Commencement of Evidence	-----
Date on which judgment is reserved	-----
Date of the Judgment	24.07.2026

Date of the Sentencing Order, if any	24.07.2026
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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.	Sagarkumar Jayeshbhai Patel	----	-----	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	Mayurkumar Rajubhai Patel P/A Holder Jignesh Ashokbhai Lumbhani	Complainant himself

B. Defence Witness, If any:

Rank	Name	Nature of Evidence
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		(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	8	Copy of Adhar Card of complainant
2	9	Copy of Invoice Bill of purchased gold
3	10	Original Cheque
4	11	Bank Return Memo
5	12	O/c copy of statutory notice
6	13	Acknowledgment sleep
7	14	Copy of online track consignment
8	15	Certified copy of Power of attorney
9	16	Certified Copy of GST Registration Certificate

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 24th day of July , 2026)

Introduction :

1. 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:-

2. The short fact, of the present complaint is as under :

It is respectfully submitted that the complainant is stated to be running a gold and silver jewellery showroom under the name of Aai shree Khodiyar Jewellers at Buhari Mukam. and is engaged in the business of selling ready made gold and silver jewellery and preparing jewellery on wages. and holds a GST registration in the name of the said firm. and the present complaint has been filed by the power holder duly authorised

by the original complainant. who is stated to be conversant with the facts of the case on account of having worked at the shop of the complainant and having remained present at the time of the transaction in question.

It is the case of the complainant that the accused visited the complainant's shop on 14.06.2023 and purchased one gold chain and got one gold item repaired under Invoice No. S/1414 for a total amount of Rs.1,17,389. out of which Rs.35,000 was paid at the time of purchase and the remaining amount of Rs.82,389 was purchased on credit. and the bill in this regard was issued to and signed by the accused. It is further stated that the accused thereafter made part payment of Rs.6,857 on 28.07.2023. leaving a balance of Rs.75,532 outstanding against the said credit purchase. It is the case of the complainant that towards discharge of the said outstanding liability, the accused issued Cheque No. 000007 dated 15.06.2024 for Rs.75,532. drawn on HDFC Bank, Vyara Branch, Account No. 50100537951766. in favour of the complainant, with an assurance that the same would be honoured on presentation. It is stated that on presentation of the said cheque by the complainant through his banker, ICICI Bank Ltd., Vyara Branch, Account No. 139505002318. the same was returned unpaid vide return memo dated 17.06.2024 with the remark funds insufficient. It is further stated that thereafter, a legal demand notice was issued by the complainant to the accused through his advocate on 27.06.2024 under the provisions of the Negotiable

Instruments Act by registered post AD. which is stated to have been duly served upon the accused on 29.06.2024. and despite service of the said notice, neither any reply was given nor was the cheque amount paid by the accused within the statutory period. It is accordingly the case of the complainant that the accused, having purchased jewellery on credit and having issued the cheque in discharge of the said liability with knowledge that there were insufficient funds in his account, has thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act, causing financial and mental loss to the complainant. and it is prayed that the accused be summoned, tried, and punished in accordance with law. and that he be directed to pay compensation up to twice the amount of the cheque, along with such other relief as the Honourable Court may deem fit.

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

Appearance and Plea

- 3 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 :

- 4 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. :

- 5 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 : 27**.

6. 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 HDFC 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 has not submitted any arguments on his behalf therefor the right for argument was closed.

7. 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 ?

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

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

- : Reasons for the Decision :-

9. 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 appropriate to quote very relevant paras which is useful to high light 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. With this background, I would like to go with the documents referred and accepted as above and considering the cheque at Exhibit 10 was given against legally enforceable debt with regards to vide **Exh.9**, which is deposited in the bank for honour and returned unpaid with the endorsement “**funds insufficient**” at Exhibit 11 and subsequently, statutory notice at Exhibit 12 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 its appears that the official mark as well as authorized signature is found at Exh : 11 , therefore its shall be presume 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 its appears that cheque vide ex: 10 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 its 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-ex-

amination 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.

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 **Sagarkumar Jayeshbhai Patel**, Age: 23 Years, Residence : Neva Faliyu, Kalkva, Valod, Dis. Tapi 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.
03. He is sentenced to undergo **simple imprisonment of 01 (one) year and ordered to pay compensation of Rs.75,532/- (Rupees Seventy-Five thousand Five Hundred Thirty - Two 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. 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.
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) read with Section 70 of the Code of Criminal Procedure, for further proceeding as per order.

**Signed and Pronounced in Open Court today on 24th
July 2026.**

Place :Tapi at Vyara
Date : 24.07.2026
B.S.Panwar

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

Proceedings closed.....