GJVL080036172025

Filed On	03/04/2025
Registered On	05/04/2025
Decided On	14/08/2026
Duration	01Y 04M 11D

IN THE COURT OF ADDITIONAL JUDICIAL MAGISTRATE FIRST CLASS AT VAPI, VALSAD

C.C.No. – 3358/2025

EXHIBIT – 24

COMPLAINANT: **WASIM ZAHIR AHMED KAZI**
AUTHORISED OFFICER OF SHRIRAM FINANCE LTD.
Age: 30; Occupation: Service;
R/O 206, 2nd Floor, Above Rangoli Hotel, Shanti Complex,
NH – 48, Ta. Vapi, Dist. Valsad.

Versus

ACCUSED: **MUKUNDBHAI RAJENDRABHAI NAYAK**
R/O PO Khadki, Navi Nagri, NH-08, Khadki,
Ta. Pardi, Dist. Valsad.

Ld. Adv. on behalf of Complainant: **N.V.MASRANI**

CHARGE: OFFENCE PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881

JUDGMENT

1. The complainant institution is registered under the Companies Act with Head office in Navi Mumbai and the branch office at the given address and is in the business of finance. The accused had taken a personal loan of Rs. 50,000/- from the complainant to be repaid in 15 installments. As the accused defaulted on the payment of installments, hence, the principal

amount, penalty, cheque bounce and overdue charges total an amount of Rs. 48,628/-. The accused then issued a cheque of **KOTAK MAHINDRA BANK, VAPI BRANCH** bearing Number **000008,** dated **18/11/2024** for the balance amount of **Rs. 48,628/-**. The accused had assured and promised to the complainant that the said cheque will get honored as and when it will be deposited in the bank for clearance.

The complainant had accordingly deposited the said cheque in his bank account which is maintained with **ICICI BANK, VAPI** branch but the said cheque was dishonored and was returned unpaid to complainant's bank on **19/11/2024** with the reason of **"FUNDS INSUFFICIENT"**.

The complainant, then, issued the legal demand notice dated **03/12/2024** through his Learned Advocate to the accused which was received by accused on **05/12/2024**. Even then, the accused had not paid any amount towards the said dishonored cheque.

Thus, the accused has committed an offence punishable under Section 138 of the Negotiable Instrument Act, 1881, within jurisdiction of this Court and in spite of service of statutory notice, the accused failed to pay the amount of cheque in question, within stipulated period and therefore, the complainant had filed this complaint under Section 138 of the Negotiable Instruments Act, 1881.

2. On presentation of the complaint, verification statement of the complainant was recorded. Thereafter, the cognizance of the offence under Section 138 of the Act was taken and the complaint was ordered to be registered as a Criminal Case. As

per the provisions of Section 227 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS), process was ordered to be issued against the accused.

3. Upon service of process, the accused appeared before the Court. After verifying that the accused had received copies of papers as per provisions of Section – 230, BNSS, the substance of the offence under Section 138 of the Act was stated and explained to the accused. Plea was framed against them vide **Exhibit – 09** in which they pleaded *not guilty* and claimed trial. The Court recorded further statement of the accused to give explanation under Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The accused merely denied the facts of the complaint and upon asking whether he wants to examine any witness in his defense, he affirmed but did not provide any names.

   When the evidence was recorded, neither the accused nor their pleader remained present and, thus, after providing sufficient opportunities, the right of the accused to cross-examine the complainant was ordered to be closed.

4. The prosecution filed the closing *pursis* vide **Exhibit – 22**. After the completion of evidence of complainant, the Court again gave due opportunity to the accused to give explanation through further statement under Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and the matter was kept for further statement. But, the accused had knowingly and willingly remained absent from the proceedings.

At this juncture, this Court placed reliance upon the recent observation made by the Hon'ble Bombay High Court in the case of ***Navneet Singh Gogia And Anr. V. State Of Maharashtra And Anr., 2025 SCC ONLINE BOM 145 (Jan 21, 2025)*** wherein it has been categorically held that:

> *"**Conclusion***
> *47. After considering the above observation in all the judgments, I am inclined to take a view, in a case before this Court when it is found out that the accused is not attending the trial, nor sought for dispensing the personal attendance and not represented by the advocate, the trial Magistrate is justified in proceeding in absence of the accused and without recording 313 statement also. ...*
> *50. Recently, the Hon'ble Supreme Court in case of **P. Mohanraj and others Vs. Shah Brothers ISPAT Private Limited (2021) 6 SCC 258** has dealt with nature of cases under Section 138 being **quasi-criminal**. The Hon'ble Supreme Court observed "Section 138 proceeding can be said to be a 'civil sheep' in a 'criminal wolf's clothing" ...*
> *56. In nutshell if the proceeding under Section 138 of the Negotiable Instruments Act are quasi-criminal in nature, there is reason to believe that one of attribute of criminal trial about mandatory recording of statement under Section 313 of the Criminal Procedure Code is not applicable. So in given set of facts narrated hereinabove, the accused cannot make complaint about causing prejudice if evidence is adduced in his absence and he cannot make complaint of non-recording of the statement under Section 313 of the Criminal Procedure Code if they have remained absent without justification. In a given case and after ascertaining certain factors, the Magistrate is justified in proceeding further in absence of accused and even dispense his statement."*

Similar view has been taken by the Hon'ble Karnataka High Court in the recent decision of ***Sunil Yadav V. Smt. Y C Manju, Criminal Revision Petition 664 of 2020 (Feb 7, 2025)*** wherein it was observed that:

> *"15. It is also important to note that considering the factual aspect of the case as well as proceedings under Section 138 of N.I. Act, it is settled law that same has to be concluded expeditiously in the light of guidelines issued by the Courts from time to time for speedy disposal of the cases, the scope of Section 142, 143 and 145 of N.I Act, it was not necessary for the Trial Court to wait for accused to make his appearance. The Court is empowered to proceed with the case without recording the statement of the accused under Section 313 of Cr.P.C. The mere use of word 'may' cannot be held to confer a discretionary power on the Court to consider or not to consider*

such defence, since it constitutes a valuable right of an accused for access to justice. If the accused has not bothered to remain present before the Court and also Court has to take note of the fact that complainant is running from pillar to pillar after filing of the case and when the material discloses that the accused did not bothered, Court has to exercise discretion and proceed with the case by dispensing with statement under Section 313 of the Code. The accused has no regard for directions of the Court. When such being the case, it is the discretion of the Magistrate to dispense with the recording of Section 313 of Cr.P.C."

Therefore, in the above set of facts and relying upon the aforementioned decisions of the Hon'ble High Courts, this Court was left with no other option but to conduct the trial in the absence of the accused, who has deliberately or voluntarily chosen to evade the trial proceedings. Moreover, the accused has not produced any evidence in his defence or has made any submissions either orally or in writing. Thus, the accused's right of replying by further statement was ordered to be closed.

As it is evident that the accused had willingly and knowingly withdrawn his presence from the Court, this Court, thus relying upon ratio laid down by the Hon'ble Delhi High Court in ***Ambika Plastopack Pvt. Ltd & Anr. V/s. State & Anr. SCRL.M.C. No. 26980/11, Cri.M.A. Nos. 9619 of 2011 & 1468 of 2013 (2013 Supreme (Del) 1147***, proceeded the matter in absence of the accused.

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

ORAL EVIDENCE:

S.No.	Description	Exhibit
1.	Affidavit on oath of **WASIM ZAHIR AHMED KAZI**	04

DOCUMENTARY EVIDENCE:

S.No.	Description	Exhibit
1.	Power of Attorney in favour of complainant	10
2.	Original Cheque bearing No. 000008 dated 18/11/2024	11
3.	Return Memo Slip for Cheque No. 000008 dated 19/11/2024	12
4.	Copy of the Demand Notice issued to accused dated 03/12/2024	13
5.	Original RPAD receipt slip Consignment No. RG419799288IN	14
6.	Tracking Report of Consignment No. RG419799288IN	15
7.	Loan Application	16
8.	Loan Agreement	17
9.	Account Statement	18
10.	Certificate u/s 65 B (4) (C)	19
11.	Merger Registration Certificate	20

6. This Court has carefully perused the evidence produced on record by the prosecution. Heard the Learned Advocate for the complainant at length. The right of argument was closed for accused as *neither the Learned Advocate for the accused nor the accused remained present* before this court. The arguments advanced by the Learned Advocate appearing for the complainant are respectfully taken into consideration.

7. The following issues are framed for determination of the

present case:

1. Whether the complainant proves that the accused had issued cheque of **KOTAK MAHINDRA BANK, VAPI BRANCH** bearing Number **000008, amount Rs. 48,628/-** dated **18/11/2024** for settlement of **Rs. 48,628/- (Rupees Forty Eight Thousand Six hundred and Twenty Eight Only)** 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 committed an offence punishable under Section 138 of the Negotiable Instrument Act, 1881?
2. What order?

8. Findings:
   1. In the affirmative.
   2. As per the final order.

REASONS

ISSUES NO. 1 & 2

9. 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 *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.*

10. In cases arising under Section 138 of the Act, the Hon'ble Apex Court has summarized the following principles in the decision of ***Basalingappa Vs. Mudibasappa, AIR 2019 SC 1983*****:**

1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
3. To rebut the presumption, it is open for the accused to rely on the evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139

imposed an evidentiary burden and not a persuasive burden.

5. It is not necessary for the accused to come in the witness box to support his defence.

The above principles make it clear that once signature on cheque is admitted, presumptions shall be raised under Sections 118 & 139 of the Act, and then the question to be looked into is as to whether any probable defence is raised by the accused.

11. In order to establish the case within the purview of Section 138 of the Act, the requirements which are to be fulfilled are as under :-

1. the cheque has to be towards payment of an amount of money for the **discharge in whole or in part of any debt or any other liability**,
2. the cheque is returned by the bank **unpaid**,
3. the reason for non-payment of the cheque should be **insufficient funds, exceeds the amount arranged to be paid**, etc.

The **proviso** to the said section requires that:

a. the cheque must be **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;
b. the payee or the holder in due course of the cheque makes a **demand for the payment** of amount of money under the cheque by giving a notice in writing to the drawer of the cheque **within 30 days** of information received from the bank;

c. the **drawer fails to make the payment of cheque amount within 15 days** of the receipt of the notice.

All these abovementioned requirements are cumulative. When all the requirements are satisfied, the person who had drawn the cheque can be held to have committed an offence under Section 138 of the Act.

12. Taking into account the legal preposition cited above, it seems important to this Court to peruse the evidence with the ingredients of the offence under section 138 of NI Act. The complainant had been examined vide **Exhibit – 04** by affidavit deposed by him wherein he has affirmed the facts of the complaint filed by him. As the complainant was not cross-examined by the accused, it has to be determined as to whether the ingredients of Section 138 NI Act are fulfilled by complainant or not. Here, 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 presumed that the cheque was given by the accused to the complainant for discharge of legal debt**.

13. The complainant has produced on record the cheque at **Exhibit – 11**, which returned unpaid on **19/11/2024**. The complainant has stated the fact of dishonor on oath in his

affidavit in evidence and also produced the **return memo** on record vide **Exhibit – 12**. As per the provisions of Section 146 of the Act, the return memo is admissible in evidence. The return memo also supports the fact of the complaint and a perusal of the return memo indicates that the cheque was dishonored due to "**FUNDS INSUFFICIENT"**. The accused has neither challenged nor controverted the genuineness of these documents. Thus, it may be presumed that the disputed cheque dated **18/11/2024** was deposited within the prescribed time and returned dishonored on **19/11/2024** for the reason of **FUNDS INSUFFICIENT**. Hence, the provision of Section 138 (a) of the Act stands complied with.

14. As regards the requirement of Section 138 (b) of the Act, it is the case of the prosecution that pursuant to intimation of dishonour of the cheque, statutory notice for demanding payment of the dishonored amount was issued by the complainant on **03/12/2024** through R.P.A.D. and the said notice was received by the accused. The complainant has reiterated his case in his evidence in detail and produced office copy of the **Notice** vide **Exhibit – 13**. The complainant has also identified signature of the advocate on the notice. Since, this evidence has not been controverted by the defence, there is no reason to disbelieve this version. In light of the above evidence, it may safely be held that the complainant issued the statutory notice on **03/12/2024**, which was received by the accused.

Accordingly, it is held that the provision of Section 138 (b) of the Act also stands complied with.

15. It is the case of the complainant that despite service of the notice, the accused has not paid the cheque amount within the stipulated time and neither given any reply to the notice. The accused has not challenged or rebutted this fact. Thus, it becomes admitted that the accused has not paid the cheque amount within the period of **fifteen days of receipt of the notice** and the cause of action has arisen in favour of the accused in view of the provision of Section 138(c) of the Act.

16. A conjoint reading of the provisions of Sections 138 (c) and 142 (b) of the Act indicates that the complaint is required to be filed within a period of **one month from the date of cause of action**. As noted above, notice was delivered on **05/12/2024**, the accused did not pay the amount within fifteen days and, therefore, cause of action can be said to have arisen on or about **20/12/2024**. Thus, the complaint is required to be filed within a period of **one month** therefrom. The present complaint was filed on **16/01/2025**, which is evident from the order below **Exhibit – 1**. There is no dispute regarding this fact. Hence, the complaint is also filed within the period of limitation.

    In view of the above discussion, it can be held that the requirements of Sections 138 (a), (b) & (c) as well as Section 142 (b) of the Act are fully complied with.

17. As regards issuance and execution of the cheque, the deponent **WASIM ZAHIR AHMED KAZI (Exhibit – 04**) in his affidavit examination-in-chief has deposed the facts of the complaint and reiterated that the accused issued the disputed

cheque in his favour in order to pay the amount agreed. In the deposition, it is clearly stated that the accused issued the disputed cheque by putting his signature. The deponent has also produced original cheque, which is exhibited at **Exhibit – 11**. The defence has not controverted the statement of the deponent by conducting his cross-examination. Thus, on overall consideration of the prosecution evidence, it is proved that the cheque in dispute is of the accused and bear his signature. Hence, the execution of the cheque by the accused stands proved.

18. Since the complainant has proved the execution of the cheque, presumptions under Sections 118 & 139 of the Act arises in favour of the complainant and the burden to rebut the said presumptions shifts on the accused. Meaning thereby, it is to be presumed that the accused had issued the cheque in favour of the complainant in order to discharge the legal debt. Now, the burden shifts on the accused to rebut the said presumptions.

19. As noted above, the accused and his advocate did not remain present after recording the plea and the statement under Section 351, BNSS. In ***Kumar Exports (2009) 2 SCC 513***, it has been held that mere denial of existence of debt will not serve any purpose but the accused may adduce evidence to rebut the presumption. The Hon'ble Apex Court held as under: **(SCC pp. 520-21, para 20)**

> *"20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent*

man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated ***. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused****. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act."*

In the present case, the accused merely recorded his plea and denied the facts of the complaint, but, at the time of trial did not bring any evidence to shift the burden of proof to the complainant. Hence, the defence of the accused is not established and, therefore, it can be said that the accused has failed to rebut the presumptions under Sections 118 and 139, NI Act. Thus, the case of the complainant stands completely proved.

20. Accordingly, it is held that the complainant has succeeded in proving all necessary ingredients for holding the accused guilty of the offence punishable under Section 138 of the Act. As a result, it is held that the accused has committed the

offence under Section 138 of the Act and **ISSUE NO.1** is answered in the **AFFIRMATIVE**.

21. For the reason stated above, this Court is of the considered view that with the help of the circumstances brought on record and the evidence adduced, the complainant has successfully established all ingredients as per section 138 of NI Act. Considering the law laid down in the case of ***Jugesh Sehgal Vs. Shamsher Singh Gogi***, 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.

Date : 14/08/2026	Mrs. Kirti S. Soni
Place : Vapi	Addl. JMFC, Anand.
	(J.O. Code – 01649)

22. Heard the Learned Advocate for the complainant. The accused is not present and thus, the right of hearing for quantum of sentence is closed for the 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 and reliance has been placed on the landmark case of ***R.Vijayan v. Baby GLR 2012 (2) 1353.***

23. 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 very 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 and to establish healthy environment for the credibility of Negotiable Instruments.

Hence, the Court passes the following order:

ORDER

1. The accused **MUKUNDBHAI RAJENDRABHAI NAYAK** is hereby convicted under Section 278 (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 for the charge levied under Section 138 of NI Act. The accused is hereby sentenced for simple imprisonment for 3 months with **Rs. 70,000/- (Rupees Seventy Thousand only)** as fine. For the non-payment of fine of Rs. 70,000/- (Rupees Seventy Thousand only), the accused has to undergo simple imprisonment of 15 days separately.

2. From the fine collected, **Rs. 48,628/- (Rupees Forty Eight Thousand Six Hundred and Twenty Eight Only)** is to be given to the complainant as compensation under Section 395 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Rest of the fine to be deposited to the government fund.

3. As the accused did not remain present before this Court, a Non Bailable Warrant is to be issued for execution of Sentence as per Section – 458, BNSS.

4. A copy of this judgment to be given free of cost to the accused as per section 404 of the Bharatiya Nagarik Suraksha Sanhita, 2023, as and when brought before the Court.

Order signed and pronounced in open Court today, 14^{th} August, 2026.

Date : 14/08/2026	Mrs. Kirti S. Soni
Place : Vapi	Addl. JMFC, Vapi.
	(J.O. Code – 01649)

Typed by – Self.