GJVL080076252021

Filed On	26/08/2021
Registered On	26/08/2021
Decided On	17/06/2026
Duration	04Y 09M 22D

सत्यमेव जयते

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

C.C. No. – 7317/2021

EXHIBIT – 424

COMPLAINANT : **SANJAY DHIRAJLAL DESAI,**
AUTHORISED PERSON, M/S GAUTAM EXIM LIMITED
Office, C/7/57-58-59, Gautam Exim House,
Next to 21st Century Hospital, GIDC, Vapi,
Ta. Vapi, Dist. Valsad

Versus

ACCUSED :
1. **M/S P.R. PACKING SERVICE (UNIT 2)**
2. **PATHIK BHANSALI**
3. **PARTH BHANSALI**

Offices at Survey No. 184/3/1 & 184/3/3, Naroli, Silvassa, D & N.H.
R/O 1-A, 1st Floor, Pushpam Co-Op Hsg. Soc. K.D. Road,
Vile Parle West, Mumbai

Ld. Adv. on behalf of Complainant : **K.M.BRAHMBHATT**

Ld. Adv. on behalf of Accused : **P.R.MISHRA**

CHARGE : **PUNISHABLE UNDER SECTION 138 READ WITH SECTIONS 141/142 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.**

:: JUDGMENT ::

1. Complainant is into trading of Kraft Paper and has authorised Mr. Sanjay Dhirajlal Desai to act on its behalf. Accused no. 1 is a partnership firm and accused nos. 2 and 3 are its partners. Accused no. 1 is a customer of the complainant firm and issued purchase orders for goods to

be bought on credit for 60 days. The total amount due in the ledger of complainant for the accused is **Rs. 3,73,56,885/-** and the details of the invoices are shared in the complaint.

2. Ultimately, for the repayment of amount, the accused then issued cheques of **BANK OF BARODA, MUMBAI BRANCH** bearing Number **015677, 015678,** dated **15/01/2021** for the amount of **Rs. 36,47,483/- & Rs. 1,19,76,810/-** . The accused had assured and promised to the complainant that the said cheques will get honored as and when it will be deposited in the bank for clearance.

   The complainant had accordingly deposited the said cheques in the bank account which is maintained with **KOTAK MAHINDRA BANK, VAPI BRANCH** but the said cheques were dishonored and returned unpaid to complainant's bank on **05/02/2021** with the reason of **"FUNDS INSUFFICIENT"**.

   The complainant, then, issued the legal demand notice dated **15/02/2021** through his Learned Advocate to the accused which was received by accused on **20/02/2021**. Accused did not reply to the notice. Also, the accused had not paid any amount towards the said dishonored cheques.

   Thus, the accused have 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 cheques in question, within stipulated period and therefore, the complainant had filed this complaint under Section 138 of the Negotiable Instruments Act, 1881.

3. 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 204 of the Code of Criminal Procedure, 1973, process was ordered to be issued against the accused.

4. 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 – 207, Cr.P.C, the substance of the offence under Section 138 of the Act was stated and explained to the accused. Plea was recorded vide **Exhibit – 14, 15 and 23**, respectively in which they pleaded *not guilty* and claimed trial.

5. The prosecution filed the closing *pursis* vide **Exhibit – 380**. After the completion of evidence of complainant, the Court again gave due opportunity to the accused to give explanation through further statement under Section 313 of the Criminal Procedure Code and the matter was kept for further statement. The accused denied the incriminating evidence against them while recording of the statement under Section 313 of Cr.P.C. and came with a defence that the entire matter is false and frivolous.

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

ORAL EVIDENCE:

S.No.	Description	Exhibit
1.	Examination on oath of **SANJAY DHIRAJLAL DESAI.**	04
2.	Examination on oath of **R. BALASUBRAMANIYAN, DIRECTOR, GAUTAM EXIM LIMITED**	209
3.	Examination on oath of **GAUTAM GYAN RAMASHISH PRASAD, BANK MANAGER, BANK OF BARODA, CP TANK, MUMBAI BRANCH**	368

DOCUMENTARY EVIDENCE:

S.No.	Description	Exhibit
1.	Debit Notes and Tax Invoices	31-183
2.	Ledger Account	184
3.	Original Cheques bearing No. 015677 & 015678 dated 15/01/2021	185, 187
4.	Return Memos	186, 188
5.	Bank Statement	189
6.	Legal Notice	190
7.	Postal Slip	191
8.	Acknowledgement Slip	192
9.	Refused Cover	193-194
10.	Board Resolution	195
11.	Documents pertaining to Commercial Suit No. 4484/2020	213-

	including Debit Notes and Tax Invoices	366
12.	Account Opening Form	369
13.	Accused's PAN Card Certified Copies	370-373
14.	Partnership Deed of Accused	374
15.	Telephone Bill of Accused	375-378
16.	Bank Account Statement of Accused	379
17.	Certified Copy of Plaint, consent Terms in Commercial Suit No. 4484/2020	410
18.	Certified Copy of Orders passed by Hon'ble Bombay High Court in Commercial Suit No. 4484/2020	411-420

7. This Court carefully perused the evidence produced on record by the prosecution. The complainant has also produced documents vide Exhibit 213 to 366 to support his arguments. Heard Learned Advocates for the parties at length. Further, arguments have been submitted by complainant verbally.

8. The following issues are framed for determination of the present case:
   1. Whether the complainant proves that the accused nos. 2 and 3 were in charge of accused no. 1 who had issued cheques of **BANK OF BARODA, MUMBAI BRANCH** bearing Number **015677, 015678,** amount **Rs. 36,47,483/- & Rs. 1,19,76,810/-** dated **15/01/2021** for settlement of **Rs. 1,56,24,293/-** 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?

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

REASONS

ISSUES NO. 1 & 2

10. 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.*

11. 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.

12. 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.

13. As regards issuance and execution of the cheques, the complainant in his affidavit-in-chief examination 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 cheques, which is exhibited at **Exhibit – 185 and 187**. The defence has not disputed his signature on the disputed cheques while conducting his cross-examination. It is also not in dispute that the said cheques relate to the Bank account maintained by the accused in BANK OF BARODA, MUMBAI BRANCH. Thus, on overall consideration of the prosecution evidence, it is proved that the cheques in dispute are of the accused and bear his signature. Hence, **the execution of the cheques by the accused stands proved**.

14. The complainant has produced on record the original cheques at **Exhibit – 185 and 187**, which returned unpaid on **15/01/2021**. The complainant has stated the fact of dishonor on oath in his affidavit in evidence and also produced the **return memos** on record vide **Exhibit – 186 and 188**. 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 cheques were 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 cheques dated **15/01/2021** were deposited within the prescribed time and returned dishonored on **05/02/2021** for the reason of **FUNDS INSUFFICIENT**. Hence, the provision of Section 138 (a) of the Act stands complied with.

15. 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 cheques, statutory notice for demanding payment of the dishonored amount was issued by the complainant on **15/02/2021** through R.P.A.D. and the said notice was returned by the accused. It is settled law that a notice refused is deemed served. The complainant has reiterated his case in his evidence in detail and produced office copy of the **Notice** vide **Exhibit – 190**. 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 **15/02/2021**, which was refused by the accused. Accordingly, it is held that the provision of Section 138 (b) of the Act also stands complied with.

16. It is the case of the complainant that <u>upon due service of the demand notice, the accused did not pay the cheque amount within the stipulated time</u>. The accused have 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.

17. 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 refused on **20/02/2021**, the accused did not pay the amount within fifteen days and, therefore, cause of action can be said to have arisen on or about **07/03/2021**. Thus, the complaint is required to be filed within a period of **one month** therefrom. The present complaint was filed on **23/03/2021** which is evident from the complaint at **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.

18. Since the complainant has proved the execution of the cheques, 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 cheques in favour of the complainant in order to discharge the legal debt. Now, the burden shifts on the accused to rebut the said presumptions. The principles as discussed in ***Basalingappa (Supra)*** 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.

The Hon'ble Supreme Court in the case of ***Kumar Exports Vs. Sharma Carpets, reported in (2009) 2 SCC 513***, in para No.20 has held as under :-

"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. <u>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</u>. 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. <u>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</u>. 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."

The said view is followed by the Hon'ble Supreme Court in the case of ***Uttam Ram Vs. Devinder Singh Hudan & Anr., reported in (2019) 10 SCC 287***.

The presumptions raised under Sections 118 & 139, N.I. Act are rebuttable presumptions. A reverse onus is cast on the accused, who has to establish a **probable defence** on the standard of preponderance of probabilities to prove that either there was no legally enforceable debt or other liability.

19. Perhaps the most important pieces of documentary evidence presented by the complainant are the certified copies of the documents that are from the **Commercial Suit No. 353/2022** before the Hon'ble Bombay High Court, arising from the interim application in Commercial Suit No. 4484/2020. These documents include the consent terms executed between the parties and the interim orders passed by the Hon'ble Bombay High Court in the said proceedings. The Hon'ble Bombay High Court has repeatedly observed regarding the admission of the payable dues by the defendants (i.e. the accused, here) and the settlement:

- Order dated 14/10/2020 – *"1. Mr. Kuldeep Nikam, the learned counsel appearing for the defendants state that the parties have arrived at a settlement. He undertakes to enter appearance within one week from from today. He states on instructions that a sum of Rs. 4,00,32,622/- payable to the plaintiff will be paid on or before 31 October,2020…"*
- Order dated 02/11/2020 – *"1. Parties are still in the process of finalising/settlement. Defendants are yet to pay the amount agreed between them. Liberty to apply after all formalities are completed.…"*
- Order dated 08/12/2021 – *"… By order dated 14th October 2020, this Court had recorded the statement of the Advocate for the Defendants who had stated on instructions that the sum of Rs.4,00,32,622/- payable to the Plaintiff will be paid on or before 31st October 2020.…"*
- Order dated 21/12/2021 – *"8. The learned counsel appearing for the Defendants has referred to the Consent Terms, which the parties had signed but which is not filed in this Court and it is stated that there is a remedy in the Consent Terms for taking out the execution proceedings for execution of the Consent Terms. He has relied upon the averments in the Affidavit-in-reply of the Defendants dated 21st December 2021 and has stated that all the assets of the Defendants have been attached and the Defendants do not have funds for payment of the dues claimed by the Applicant/Plaintiff.*

> *9. Having considered the submissions, it is noted that the Defendants have claimed in their Affidavit-in-reply dated 21st December 2021 that <u>they do not have any funds for payment of the outstanding dues admittedly payable to the Applicants/Plaintiffs as all their assets have been attached and the Defendant No.1 has been declared as NPA by Bank of Baroda</u>. ...”*

This Court considers that these certified records from the Bombay High Court (Commercial Suit No. 353/2022), including consent terms and interim orders, <u>firmly establish the defendants’ admission of liability</u>. According to these records, the defendants formally acknowledged a payable debt of Rs. 4,00,32,622/- and committed to settling it by October 31, 2020. <u>However, subsequent court orders reveal that the defendants defaulted on this agreement, eventually declaring in December 2021 that they had no funds to clear the admitted dues due to their assets being attached and their classification as a Non-Performing Asset (NPA) by the Bank of Baroda</u>.

20. In order to rebut the presumptions under Sections 118 and 139, the accused has cross-examined the complainant and his witnesses; and has raised the following points:
    1. The accused has **<u>suggested that the complainant is not authorised to file the present complaint</u>**. The complainant’s representative explicitly admits that the Board Resolution authorizing him to file the complaint lacks the signatures of all directors and is not a certified copy. Furthermore, he admits that the disputed cheques were received before the resolution authorizing him was even passed, and that he has no personal knowledge of the underlying 2019 transaction. In trials under Section 138 of the NI Act, the complainant must establish proper authorization to depose on behalf of the company. These admissions critically weaken the complainant's locus standi, as the witness lacks both valid documentary authorization and personal knowledge of the facts leading to the debt
        - “એ વાત ખરી છે કે હું કંપનીનો કર્મચારી છુ તેવુ દર્શાવતો કોઈ પુરાવો આ કામે રજુ કરેલ નથી. ... એ વાત ખરી નથી કે હું કંપનીનો કર્મચારી જ નથી.”
        - “એ વાત ખરી છે મને કંપની તરફથી અધિકૃત કરતો ઠરાવ કંપની દ્વારા કરવામા આવેલ છે. મને એ હકીકતનો ખ્યાલ નથી કે કંપનીના બધા ડિરેકટરોની મંજુરી લઈ તેમની સહીઓ તથા નોંધ મિનિટસ બુકમા કરવામા આવતી હોય છે. એ વાત ખરી કે આક–૧૯૫ વાળા દસ્તાવેજો મા બધા ડિરેકરોની સહી નથી. એ વાત ખરી છે કે બધા ડિરેકટરોની સહી વાળુ પ્રમાણીત કોઈ

ઠરાવ આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે મને વર્ષ–૨૦૨૧મા અધિકૃત કરતો ઠરાવ છે અને ૨૦૧૯ ના વ્યવહારની માહીતી નથી તેનુ કારણ તેનુ ખાતુ નિયમિત ચાલતુ હતું. એ વાત ખરી છે કે આંક–૩૬ થી ૧૮૨ વાળા બીલોનો વ્યવહાર મારા રૂબરૂ થયેલો નથી. સાહેદ જણાવે છે કે જુદા –જુદા વિભાગ હોય માટે મને ખબર નથી."

- "એ વાત ખરી છે કે તકરારી ચેક મને ફરીયાદ દાખલ કરવા માટે આપેલ ઠરાવ પહેલાના છે."
- "એ વાત ખરી નથી કે કંપનીના ડીરેકટરોએ મને કોઈ કરીયાદ દાખલ કરવા સતા આપેલ ન હોય તેમ છતા ખોટી ફરીયાદ કરેલ છે."

At this juncture, this Court would like to refer to the recent decision of the Hon'ble Apex Court in the case of ***M/S Naresh Potteries v. M/S Aarti Industries, 2025 INSC 1 (Jan 2, 2025)***:

*"21. It could thus be seen that this Court distinguished the position of a complainant filing a complaint on behalf of an individual from the position of a complainant filing a complaint on behalf of a company. This Court clarified that although the decision in the case of **A.C. Narayanan (supra)** had taken center stage, the facts involved in that case were in the background that the complaint filed was based on the power of attorney issued by the 'payee' who was also an individual. In such cases, the manner in which the power was being exercised had to be explicitly stated. However, this Court clarified that the position that would emerge when the complainant is a company or a corporate entity will have to be viewed from a different standpoint. This Court held that when the company is the payee of the cheque based on which a complaint is filed under Section 138 of the NI Act, the complainant should necessarily be the company which is to be represented by an authorised employee and in such a situation, the indication in the complaint and the sworn statement, oral or by affidavit, to the effect that complainant is represented by an authorised person who has knowledge, would be sufficient. Drawing a distinction from the "specific assertion as to the knowledge of the power-of-attorney holder" which is to be "stated explicitly" as categorically laid down in **A.C. Narayanan (supra)**, this Court held that in cases where the payee/complainant is the company, all that is necessary to be demonstrated before the Magistrate is that the complaint is filed in the name of the payee and if the complaint is being prosecuted by someone other than the payee, he has knowledge of the contents of the complaint and he is duly authorised to prosecute the complaint. This Court further clarified that if there is any dispute with regard to the person prosecuting the complaint not being authorised or*

it is to be demonstrated that the complainant had no knowledge of the transaction, and as such could not have instituted and prosecuted the complaint, it would be open for the accused person to dispute the position and establish the same during the course of the trial. However, dismissal or quashing of the complaint at the threshold would not be justified. It was held that the issue of proper authorisation and knowledge can only be an issue for trial."

Thus, the Hon'ble Supreme Court has clarified that when the complainant is a company or corporate entity, it must be represented by an **authorized employee**, and there must be a clear indication in the complaint and supporting statement that the person is authorized and has knowledge of the transaction.

Perusal of the entire record suggests that **the complainant has stated in the complaint that he is an employee of the complainant firm**. Under such circumstances, it appears that the complainant has filed the complaint within authority provided by the firm.

2. Accused has challenged any legally recoverable debt under the garb of lack of purchase orders, delivery receipts and otherwise. For a legally enforceable debt to exist in a commercial transaction, the supply and receipt of goods must be established. The witness admits absence of foundational commercial documents: no purchase orders, no delivery challans, no lorry receipts (LR), and importantly, no acknowledgment signatures from the accused on the invoices (**Exhibits 36 to 182**).

- "એ વાત ખરી છે કે આંક–૩૬ થી ૧૮૨ વાળા બીલ મા કોઈ માલ મળેલા બદલ ની સહી નથી."
- "એ વાત ખરી છે કે આ કામે મે કોઈ માલ મોકલેલ તેની કોઈ લોરી રીસીપ્ટ કે ટેમ્પાનું કોઈ ભાડું ચુકવ્યાની કોઈ રસીદ રજુ કરેલી નથી. એ વાત ખરી છે કે મારી ફરીયાદમા લોકલ ટેમ્પોમા માલ મોકલેલ તેવુ લખેલ નથી. એ વાત ખરી નથી કે મે કોઈ પણ ટ્રાન્સપોર્ટ મારફત માલ મોકલાવેલો નથી."
- "એ વાત ખરી છે કે મારી ફરીયાદ સાથે કોઈ ડિલીવરી ચલણ રજુ કરેલ નથી. એ વાત ખરી નથી કે આરોપીઓ મને કોઈ માલ પરચેઝનો કોઈ ઓર્ડર આપેલો નથી. એ વાત ખરી છે કે મે કોઈ પરચેઝ ઓર્ડર રજુ કરેલ નથી. એ વાત ખરી છે કે આંક–૩૬ થી ૧૮૨ વાળા બીલોમા કોઈ લોરી રીસીપ્ટ નંબર લખેલો નથી. એ મને ખ્યાલ નથી કે ૫૦ હજારથી વધારે રકમના બીલ હોય તો ઇ –વે બીલ બનાવુ ફરજીયાત છે. એ વાત ખરી છે કે આંક–૩૨ થી ૧૭૮ વાળા

બીલોમા ઈ–વે બીલ નંબર શુન્ય એવુ લખેલ છે. એ વાત ખરી નથી કે આવા ઇ–વે બીલ અંગેનો ટેક્ષ ભરેલ ન હોય જેથી મે આવો કોઈ માલ મોકલાવેલ નથી. એ વાતનો મને ખ્યાલ નથી કે એક રાજય માથી બીજા રાજય મા માલ જાય તો ઇ–વે બીલ બનાવુ પડે."

- "એ વાતની મને ખબર નથી આંક–૩૬ થી ૧૮૨ વાળા બીલોમા જણાવેલ માલ જે તે તારીખ બીલ પ્રમાણે તે માલ સ્ટોક હતો કે કેમ તે દર્શાવવા કોઈ રજીસ્ટર રજુ કરેલ નથી. મને યાદ નથી કે અમે આરોપી જે તારીખે માલ મોકલેલ તે માલ માકલ્યાનુ કોઈ આઉટવર્ડ રજીસ્ટર મા નોંધ કરેલ છે. એ વાત ખરી છે કે આવુ કોઈ રજીસ્ટર રજુ કરેલ નથી."
- "એ વાત ખરી છે કે મારી ફરીયાદ અને નોટીસમા આરોપીને આપેલ માલના પરચેઝ ઓર્ડર નંબર તથા વિગત અંગેની કોઈ માહીતી જણાવેલી નથી."
- "એ વાત ખરી નથી કે આંક–૩૬ થી ૧૮૨ વાળા બીલોનો માલ આરોપીને મોકલાવેલ નથી. એ વાત ખરી નથી કે આરોપીએ કોઈ પરચેઝ ઓર્ડર આપેલ ન હોવા છતા આંક–૩૬ થી ૧૮૨ વાળા બીલો ખોટી રીતે ઉભા કરી અને તેના આધારે ખોટી ફરીયાદ કરેલ છે. એ વાત ખરી નથી કે અમારૂ આરોપી પાસેથી કોઈ લેણુ બાકી ન હોય તેમ છતા ખોટા બીલો ઉભા કરી એડવાન્સ ચેકનો દુરઉપયોગ કરી ખોટી કરેલ છે."

Herein, Court would like to refer to **Exhibit 410** i.e. **consent terms in commercial suit 353/2022 at the Hon'ble Bombay High Court dated 05/10/2020** reads thus:

"1. The abovementioned Suit has been filed by the Plaintiff for a joint and several Decree against the Defendants in a sum of Rs.4,00,32,622 (Four Crore Thirty- Two Thousand and Six Twenty-Two Rupees). Post the service of the Plaint on the Defendants, the parties have entered into negotiations and have agreed to settle the dispute as per the Terms and Conditions as recorded herein.

2. The Defendants admit that an amount of Rs. 4,00,32,622 (Four Crore Thirty-Two Thousand and Six Twenty Two Rupees) is due and payable by the Defendants to the Plaintiff towards Kraft paper and board supplied by the Plaintiff to the Defendants between the period May, 2019 to October, 2019.

3. The said amount of Rs. 4,00,32,622 (Four Crore Thirty-Two Thousand and Six Twenty Two Rupees) shall be paid to the Plaintiff on or before 31st October. 2020.

4. The Defendant Nos. 2 & 3 as Partners of the Defendant No.1 Firm, undertake to this Hon'ble Court to pay the amounts as stated above on or before 3 October 2020. The Defendant Nos.2 & 3 undertakes that there would be no default in payment of the amount *as stated herein above. ...*"

This Court has noted that in the commercial suit, the defendants (accused no. 2 and 3 in the present complaint) have admitted that an amount of Rs. 4,00,32,622/- is due and payable to the plaintiff toward Kraft Paper and board supplied by the plaintiff to the defendants between **May and October, 2019**.

While the amount in the cheques as part of this complaint is certainly less than that, Court can safely assume that the circumstances are matching as to the legally recoverable debt.

3. The accused has further raised a defense that the cheques in question were not issued towards the discharge of any legally enforceable debt, but were merely handed over as 'security' cheques.

   - "એ વાત ખરી છે કે અમે આરોપી વર્ષોથી ધંધો કરીએ છીએ. એ વાત ખરી નથી કે અમે આરોપીએ માલ મોકલતા પહેલા ચેક લેતા હતા. એ વાત ખરી નથી કે અમે આરોપી પાસેથી એડવાન્સ ચેક લીધેલ અને આરોપીને માલ મોકલ્યા વગર તેનો દુરઉપયોગ કરી ખોટી રીતે બેંકમા જમા કરાવેલ છે."

The Hon'ble Supreme Court of India has consistently settled the legal position regarding security cheques, notably in the case of ***Sripati Singh (D) v. State of Jharkhand & Anr. (2021) 2021 INSC 688***, holding that *a cheque issued as security pursuant to a financial transaction cannot be considered a worthless piece of paper. When a cheque is issued as security, it is given as a pledge of payment. If the underlying debt becomes due and the debtor fails to pay, the security cheque matures into an instrument for the discharge of a legally enforceable debt. If it is presented for encashment and subsequently dishonored, it strictly attracts the penal provisions of Section 138 of the NI Act*.

In the present matter, the liability of the accused is not hypothetical; it has been unequivocally crystallized. As already noted by this Court, the consent terms documented in **Exhibit 410** establish that the accused explicitly admitted to the outstanding dues for the Kraft paper supplied. Because a legally enforceable debt was due and payable at the time the cheques were presented to the bank, the defense that the cheques were merely kept for security holds no merit.

More so, the accused has neither placed any substantive evidence to prove the alleged misuse of cheque nor has he himself submitted his deposition on oath. The accused has completely failed to lead any cogent evidence to demonstrate that the debt did not exist on the date of presentation. Consequently, the "security cheque" defense fails to rebut the statutory presumption under Section 139 of the NI Act, and the liability of the accused remains intact. Thus, in the light of the above discussion, this defence regarding misuse of cheques does not stand.

4. The sale transactions between the parties have further been challenged by the defence while cross-examining the complainant-witness, Director vide **Exhibit – 209**:
   - "મને આંક–૨૨૭ નુ પ્રથમ ડોકયુમેન્ટ બતાવવામાં આવે છે જે જોઈને કહુ છુ આ જોબ ઓર્ડરમાં પીઆર પેકેજીંગના સહી સીકકા નથી. સાહેદ સ્વેચ્છાએ જણાવે છે કે તે ઈન્ટરનલ ઓર્ડર છે અમારી પાસે પીઆર પેકેજીંગથી અલગથી ઓર્ડર આવેલો. એ વાત ખરી છે કે હાલનો જે ઓર્ડર છે તે શાહ પેપરમીલ્સ લી. નો જોબ ઓર્ડર છે. મને આંક–૨૨૭ નુ બીજુ ડોકયુમેન્ટ બતાવવામાં આવે છે જે ટેકસ ઈનવોઈસ છે. એ વાત ખરી છે કે આ ઈનવોઈસ શાહ પેપરમીલ્સે ગૌતમ એકઝીમને આપેલી છે તે અંગેનો છે. મને આંક–૨૨૭ નુ ત્રીજુ ડોકયુમેન્ટ બતાવવામાં આવે છે જે જોઈને કહુ છુ કે તે ઈ–વે બીલ છે. એ વાત ખરી છે કે આ ઈ–વે બીલ શાહ પેપરમીલ્સે ગૌતમ એકઝીમને મટીરીયલ સપ્લાય કર્યા બાબતનુ છે. મને આંક–૨૨૮નું ... . મને આંક–૨૨૯ નું પ્રથમ ડોકયુમેન્ટ ... એ વાત ખરી છે કે આ પરચેજ ઓર્ડર પર પીઆર પેકેજીંગનો કોઈ સહી સીકકો નથી. ..."
   - "એ વાત ખરી છે કે મેં રજુ કરેલા તમામ ઈનવોઈસ શાહ પેપેરમીલ દવારા ગૌતમ એકઝીમને આપેલા છે તે છે. એ વાત ખરી છે કે આ તમામ ઈનવોઈસમાં પી.આર પેકેઝીંગનું નામ કે ઓથોરાઈઝડ પર્સનની સહી નથી. એ વાત ખરી છે કે મેં જે પરચેઝ ઓર્ડર રજુ રાખેલ છે તે પણ પી.આર પેકેઝીંગે શાહ પેપેરમીલને આપેલ છે તે છે અને તેમાં પી.આર પેકેઝીંગ ના ઓથોરાઈઝડ પર્સનની સહી કે સીકકો નથી. એ વાત ખરી છે કે તમામ જોબ ઓર્ડર ગૌતમ એકઝીમે શાહ પેપરમીલને આપેલા છે. એ વાત ખરી છે કે મેં ખરીદી અને વેચાણ બંનેના ઈ વે બીલ રજુ રાખેલ છે. એ વાત મને હાલ યાદ નથી કે મેં રજુ રાખેલ ઈ વે બીલમાંથી ઘણા ઈ વે બીલ માલસામાનની ખરીદી પહેલા માલસામાનના વેચાણના ઈવે બીલ છે."

   The witness admits that the purchase orders and invoices do not bear the signature, stamp, or name of any authorized person from P.R. Packaging. The witness concedes that the job orders were given by Gautam Exim to Shah Paper Mills, and the tax invoices produced are issued by Shah Paper Mills to Gautam Exim. Regarding this, the witness has clarified that the complainant acted merely as an agent for Shah Paper Mills. Further, the witness cannot confirm whether the ledger account of P.R. Packaging (Exhibit 376) contains any acknowledgment signature from the accused's authorized personnel.

At this juncture, this Court notes that the complainant-witness i.e. the Director has provided a credible explanation regarding the agency framework with Shah Paper Mills. Consequently, the defense's reliance on technical gaps in E-way bills, missing direct purchase orders, or logistical discrepancies is entirely eclipsed by the accused's own solemn admission of debt in a competent court of law.

This Court opines that when a party formally admits to a crystallized debt of Rs. 4,00,32,622/- for the exact period of supply (**May to October 2019**) before the Hon'ble Bombay High Court (Exhibit 410), they cannot simultaneously plead 'absence of privity of contract' or 'lack of delivery' in this Court to escape criminal liability. As the issuance of the cheque and the signature are admitted, and there is a clear, independent acknowledgment of the outstanding dues, minor discrepancies in the complainant's evidence regarding documentary proof of supply cannot be permitted to dislodge the statutory presumption under Section 139 of the NI Act. Hence, the burden remained on the accused to prove that the consent terms in the High Court were somehow void or unrelated to this transaction, which they have completely failed to do.

5. The defense has placed reliance on the admission elicited during the cross-examination of the Bank Manager (**Exhibit – 368**) wherein it was noted that he brought the computer-generated bank statements without the mandatory certificate under the Bankers' Books Evidence Act.

   - "એ વાત ખરી છે કે આજ હું મારી સાથે બેંકર્સ બુક એવીડન્સ એક્ટ હેઠળનુ સર્ટીફીકેટ લાવેલ નથી."

   Pertinently, when appreciating this evidence during the trial proceedings, the admissibility of electronic records require the mandatory certification. However, Court opines here that the contention taken by the accused has not been taken to fruitful conclusion towards rebutting the presumption of legal debt.

6. The accused, while cross-examining the **bank manager** (**Exhibit – 368**) has **raised doubt that the writing and color of inks of the signature and other details are different**.

- "મને આંક– ૧૮૧ અને ૧૮૩ બતાવવામાં આવે છે જે જોઈને જણાવુ છુ કે ચેકમાં સહી અલગ પેનથી કરેલી છે અનો બાકીની તમામ વિગત એક જ પેનથી લખવામાં આવેલ છે.."

In this respect, this Court places reliance upon the judgment of Hon'ble Supreme Court in the case of ***Bir Singh v. Mukesh Kumar 2019 SCC ONLINE SC 138***, in which it has been held that:

"37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

Thus, relying upon the above ratio, as long as the signature is not disputed, it is immaterial to dispute that the details on the cheque were filled by the person other than the drawer. In the present case, as the defence has not disputed the signature, such contention raised by the accused is **immaterial**.

Therefore, the bare denials made by the accused during their examination hold no evidentiary value against the documentary weight of **Exhibits – 410 to 420**. The defence has not placed cogent evidence to rebut the statutory presumptions under Sections 118 and 139, NI Act.

21. Even in the statement recorded under Section 313, Cr.P.C., the accused have plainly denied the facts of the complaint. Moreover, they denied to examine any witness in support of their version of defence, they failed to produce any names of such witnesses. 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 denied the facts of the complaint, but, at the time of trial did not bring any cogent 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.

22. In the case at hand, perusing the records, it is clear that accused has failed to state their own version of the circumstances revolving around the offence. The accused, not replying to the legal demand notice, not denying to the factum of issuance of cheques as well as the signature thereupon and by not stating their version of the events in their further statement regarding repayment of the alleged amount, have failed to provide this Court with an alternative to the complainant's version of the events. In the present case, accused have failed to bring a clear picture of the events from his perspective in order to tilt the probabilities in his favour. Thus, it is opinion of this Court that the accused have failed to establish his

probable defence on the scale of preponderance of probabilities.

23. In view of the settled position of law, the burden is on the accused to rebut the presumption under Section 139 of NI Act, it is necessary to refer to the decision of the Hon'ble Apex Court in the case of ***Rajesh Jain v. Ajay Singh 2023 10 SCC 148*** where in it is observed that:

"54. Nothing significant has been elicited in the cross-examination of complainant to raise any suspicion in the case set up by the complainant. Other than some minor inconsistencies, the case of the complainant has been consistent throughout as can be noticed from a perusal of the complainant, demand notice and affidavit evidence. In fact, the signature on the cheque having not been disputed, and the presumption under Section 118 and 139 having taken effect, the complainant's case stood satisfied every ingredient necessary for sustaining a conviction under Section 138. The case of the defense was limited only to the issue as to whether the cheque had been issued in discharge of a debt/liability. The accused having miserably failed to discharge his evidential burden, that fact will have to be taken to be proved by force of the presumption, without requiring anything more from the complainant.

55. As rightly contended by the appellant, there is a fundamental flaw in the way both the Courts below have proceeded to appreciate the evidence on record. Once the presumption under Section 139 was given effect to, the Courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the Court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the Court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The Court would then take an overall view based on the evidence on record and decide accordingly."

In the light of the above discussion, the standard of proof required is preponderance of probabilities, the accused, in the instant case, are not successful in establishing his defence. Therefore, it can be said that the accused has failed to rebut the presumptions under Sections 118 and 139, N.I.Act. Under such circumstances, it is to be held that the complainant is successful in proving the guilt of the accused beyond reasonable doubt and therefore the accused is liable for conviction.

24. Before parting with the final conclusion, it is imperative to address the vicarious liability of Accused Nos. 2 and 3 under Section 141 of the Negotiable Instruments Act, 1881. Accused No. 1 is a partnership firm, and the Section 141 explicitly extends to firms and their partners. The complainant has categorically averred that Accused Nos. 2 and 3, being the active partners of Accused No. 1, were in charge of, and responsible to the firm for the conduct of its day-to-day business at the time the offense was committed. This assertion made, in the complaint as well as the affidavits for examination in chief, is heavily corroborated by the documentary evidence on record, specifically **Exhibit – 410** (consent terms in Commercial Suit No. 353/2022 before the Hon'ble Bombay High Court), wherein Accused Nos. 2 and 3 admitted to the financial liability and the outstanding dues toward the complainant on behalf of the firm.

    It is settled law that once the foundational requirements of Section 141 are met, the burden shifts to the accused partners to invoke the proviso to Section 141(1) by adducing cogent evidence to prove that the offense was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such an offense. However, throughout the course of the trial, including their statements recorded under Section 313 of the Cr.P.C., Accused Nos. 2 and 3 offered mere denials. They completely failed to bring forth any material or examine any defense witness to sever their statutory liability or demonstrate that they were dormant partners detached from the firm's financial affairs. Consequently, the statutory requirements of Section 141 stand conclusively fulfilled, establishing beyond a reasonable doubt that Accused Nos. 2 and 3 are vicariously liable for the dishonor of the cheques issued on behalf of Accused No. 1.

25. In the facts and circumstances of the case, the submissions advanced on behalf of the accused cannot be accepted. The accused has failed to adduce the evidence to rebut the presumption. The documentary evidence supports the case of the complainant. 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**.

26. 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 : 17/06/2026 Mrs. Kirti S. Soni
Place : Vapi Addl. JMFC, Vapi.
(J.O. Code – 01649)

27. Heard the Ld. Advocates on the quantum of sentence to be imposed. Referring to the nature of the transaction between the parties, loss suffered by the complainant and the conduct of the accused, the Ld. Advocate for the complainant has prayed to impose maximum sentence of imprisonment as well as a fine of double the cheque amount. It is also submitted by the Ld. Advocate for the complainant that the amount of the fine imposed be paid as compensation to the complainant as he has suffered loss of income and interest as well as mental agony. The complainant has also relied upon the decision of Hon'ble Apex Court in ***R.Vijayan Vs. Baby & Anr., 2012 (2) GLR 1353***.

28. The Ld. Advocate for the accused has prayed for leniency by contending that the accused is the sole earner of his family and shouldering the liability of the family.

29. Given the nature of the offence and the quantum of amount, benefit of the provisions of **Probation of Offenders Act, 1958** is not extended to the accused, as such offences affect the economy of the nation. The punishment prescribed for the offence under Section 138 is imprisonment for a period which may extend to two years or with fine. The Hon'ble Supreme Court has laid down in ***Bir Singh vs. Mukesh Kumar 2019 (4) SCC 197*** that the penal provision of Section 138 is a **deterrent** in nature. It was observed:

> *"9. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments including cheques and to encourage and promote the use of negotiable instruments including cheques in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to the callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same."*

Thus, considering the above ratio along with the present facts and circumstances, this Court is of the view that imposing the following punishment would suffice the purpose and would meet the ends of justice.

Hence, in answer to **Issue No. 2**, following order is passed in interests of justice:

ORDER

1. In view of the above discussion, the accused, **M/S P.R. PACKING SERVICE (UNIT 2), PATHIK BHANSALI & PARTH BHANSALI** are hereby convicted under Section 255 of the Criminal Procedure Code, 1973 for the charge levied under section 138 of NI Act. The accused **PATHIK BHANSALI & PARTH BHANSALI** are hereby sentenced to undergo simple imprisonment for 19 months with Rs. 2,40,00,000/- (Rupees Two Crore Forty Lacs only) as fine. For the non-payment of fine of Rs. 2,40,00,000/- (Rupees Two Crore Forty Lacs only), the accused have to undergo simple imprisonment of 4 months separately.

2. From the fine collected, Rs. 1,56,24,293/- (Rupees One Crore, Fifty Six Lakh, Twenty Four Thousand, Two Hundred & Ninety Three only) is to be given to the complainant as compensation under Section 357 of the Criminal Procedure Code, 1973. Rest of the fine to be deposited to the government fund.

3. Period of imprisonment already undergone, if any, by the accused in respect of the present offence is hereby ordered to be set-off from the primary period of sentence as per provision under Section 428 of the Criminal Procedure Code, 1973.

4. As the accused are not present before this Court, a Non Bailable Warrant is to be issued for execution of Sentence as per Section – 418(2), Cr.P.C.

5. A copy of this judgment to be given free of cost to the accused.

Order signed and pronounced in the open Court today, 17th June, 2026.

Date : 17/06/2026 Mrs. Kirti S. Soni
Place : Vapi Addl. JMFC, Vapi.
(J.O. Code – 01649)

Typed by – Self