GJRJ020027592023

Received on	:	02-02-2023		
Registered on	:	02-02-2023		
Decided on	:	18-08-2026		
Duration	:	Years	Months	Days
		03	06	16

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IN THE COURT OF 9TH ADDITIONAL CHIEF JUDICIAL MAGISTRATE, RAJKOT.

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Criminal Case No.2038 of 2023.

Exh. No. 43

Complainant :-

Shree Ram Transport Finance Co. Ltd.
Authorized Person - Virbhadrasinh Narendrasinh Jadeja,
Age :- Adult, Occupation :- Service,
Address :-
Shree Raghunath Complex, 1st Floor, Nana Mauva Main Road,
Besides Grand Central Mall, Near 150 Feet Ring Road,
Rajkot

Versus

Accused :-

Jignesh Hemantsinh Dholakiya,
Age:- 33 years, Occupation:- Driving,
Residing at :-
A.G. Quarter Block No.9, Quarter No.63,
Near Prashil Park, Near University Gate,
Rajkot - 360005

Subject :- Complaint U/s. 138 of The Negotiable Instrument Act, 1881.

Advocates:-
Ld. Advocate Mr. M. R. Pandya for the complainant.
Ld. Advocate Mr. H. B. Gohel for the accused.

-: Judgement :-

(1) Briefly, the facts of the present case are that the complainant is the limited company registered as per the Companies Act, 1956 and having its Rajkot office at the above mentioned address. The complainant is doing the business of providing various loans. The present complainant is the authorized person by the company through authority given by the company. The accused was in financial needs to purchase a vehicle and therefore, contacted the complainant for a loan and therefore, the complainant has given loan amounting Rs. 3,00,000/- on dated 29/02/2020 vide Loan agreement No. **RAJKTT002290001** on vehicle **TOYOTA INNOVA** bearing registration no. GJ03DG7107 whose total agreement value is Rs. 4,49,574/- and at the time of availing the loan signed loan agreement etc. documents and also given assurance of paying regular installments. But the accused has not paid loan amount as per agreed terms and condition. Thenafter for the remaining loan amount the accused has given three Cheques bearing Cheque No. 926839, Cheque No. 926840 and Cheque No. 926841 dated 08/09/2022, 08/09/2022 & 08/09/2022 respectively of State Bank of India for Rs. 1,29,853/-, Rs. 1,29,853/- and Rs. 1,29,853/- respectively to the complainant. Thereafter, the complainant has deposited the cheques in their bank account at Rajkot, but all the cheque returned with the endorsement of "FUNDS

INSUFFICIENT" on dated 06/12/2022, 06/12/2022 & 06/12/2022 respectively. That the instrument of the accused i.e. the cheque no.926839, cheque no. 926840 and cjeque no. 926841 returned dishonoured which means that the accused has violated the provisions of the Negotiable Instrument Act. The accused by not paying the legal due amount of the complainant on the date of the cheque, has committed offence punishable under Section 138 and 142 of the Negotiable Instrument Act. Thereafter the complainant through his Advocate sent legal demand notice through Registered A.D. dated 22/12/2022 to the accused and the notice was not served to the accused and the envelope returned with the remark of "LEFT" on dated 26/12/2022. Though the notice was served to the accused, he has not paid the cheque amount to the complainant till today. Therefore after completion of 15 days, the complainant has filed the present complaint within the one month and prays to take cognizance and to issue summons against the accused and initiate proceedings against the accused under Section 138 of the N.I. Act and also prays to order to be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both, and further prays to order to the accused to make double payment of total amount of the disputed cheque to the complainant, as per the Section 357(3) of the Criminal Procedure Code.

(2) Upon filing of the complaint, the verification of the complainant was recorded on oath under Section-200 of Criminal Procedure Code and thereafter summons was issued upon the accused under Section-204 of Criminal Procedure Code and after the service of summons/warrant the accused remained present in Court with his Ld. Advocate and the documents relied upon by the complainant had been provided under Section-207 of Criminal Procedure Code to the accused and thenafter the plea of accused was recorded under Section-251 of the Cr.P.C. vide **Exh.5 on dtd. 15/12/2023** wherein accused pleaded not guilty and claimed trial. Hence, the judicial proceeding of the present case have been carried forward.

(3) The complainant has produced following oral as well as documentary evidence in support of his complaint.

-: Oral Evidence :-

Sr. No.	Particulars	Exh. No.
1	Deposition of the complainant Vijaybhai Arshibhai Bapodara	04
2	Deposition of the complainant Virbhadrasinh Narendrasinh Jadeja	37

-: Documentary Evidence :-

Sr. No.	Particulars	Exh. No.
1.	Original cheque no.926839,cheque no. 926840 and Cheque no. 926841 of State	8,9, 10

	Bank of India of Rs.1,29,853/-, Rs. 1,29,853/-, Rs. 1,29,853/- dated 08/09/2022, 08/09/2022 & 08/09/2022 respectively.	
2.	Original bank return memo of all the cheques dated 06/12/2022, 06/12/2022 & 06/12/2022 respectively.	11,12, 13
3.	Office copy of legal demand notice sent to the accused dated 22/12/2022.	14
4.	Copy of Registered AD slip.	15
5.	Original Returned Envelope.	16
6.	Copy of Statement of account.	17
7.	Copy of Power of Attorney	18

Further, after oral and documentary evidences produced by the complainant side in this case, despite the accused having been given sufficient and reasonable opportunities to cross-examine the complainant, the accused did not remain present in the Court and not cross-examined to the complainant. Hence, the right of the accused to cross-examine the complainant was closed.

Further thereafter the complainant has produced **closing pursis vide Exh.40** and declared that he does not want to produce any more evidence apart from the above oral and documentary evidence produced on record.

(4) Further, though the present case came up on the stage of recording further statement of the accused and the further statement of the accused is recorded on dated 15/12/2023.

Hence, the further statement of the accused is recorded in this case.

Further, the accused did not remain present in the judicial proceedings and produced any oral or documentary evidence in his defence, hence the right of the accused to produce evidence in his defence has been closed.

(5) Thereafter, the complainant side has made oral arguments at length under Section-314 of the Criminal Procedure Code, 1973 in this case. I have considered the said arguments. The accused has not made any arguments in his defence despite giving sufficient opportunities to the accused, hence the right of arguments of the accused has been closed.

(6) Considering the evidences brought on record and the arguments by the complainant, to decide the present case the following issues arise for my determination.

-: Issues :-

1) Whether the Complainant proves beyond reasonable doubt that the cheque in question was given to the complainant by the accused ?

2) Whether the Complainant proves beyond reasonable doubt that he has complied with the provisions of

Section-138 (a) (b) (c) of the Negotiable Instrument Act ?

3) Whether the accused proves that he has rebutted the presumptions under Section-118 and-139 of the Negotiable Instrument Act ?

4) Whether the Complainant proves beyond reasonable doubt that the accused in this case has committed an offence punishable under Section-138 of the Negotiable Instrument Act ?

5) What order ?

(7) My findings to the above issues are as under:-

1) In affirmative.

2) In affirmative.

3) In negative.

4) In affirmative.

5) As per final order.

-: Reasons :-

(8) **- : Issue No.01 :-**

Whether the Complainant proves beyond reasonable doubt that the cheque in question was given to the complainant by the accused ?

In view of the present issue, if we consider the evidences produced on record it reveals that the complainant has produced his examination-in-chief vide Exh.4 and Exh.37 wherein he has reiterated the facts mentioned in the complaint and thereby fully supported the facts of the complaint. The complainant has produced documentary evidences such as the original cheque no.926839, cheque no. 926840 & Cheque no. 926841 of State Bank of India of Rs.1,29,853/-, Rs. 1,29,853/- & Rs. 1,29,853/- dated 08/09/2022, 08/09/2022 & 08/09/2022 respectively vide Exh.8, Exh.9 & Exh.10, original bank return memo of all the cheques dated 06/12/2022, 06/12/2022 & 06/12/2022 respectively vide Exh.11, Exh.12 & Exh.13, copy of legal demand notice sent to the accused dated 22/12/2022 vide Exh.14, copy of RPAD slip vide Exh.15 and copy of legal demand notice not served to the accused and the returned envelope dated 26/12/2022 vide Exh.16. Further looking to the above documents, it transpires that the complainant is engaged in all kind of financial services and the accused was in financial needs to purchase a vehicle and therefore, contacted the complainant for a loan and therefore, the complainant has given loan vide loan agreement no. **RAJKTT002290001** and at the time of availing the loan signed loan agreement etc. documents and also given assurance of paying regular installments. But the accused has not paid loan amount as per agreed terms and condition. Further, when the complainant demanded the remaining loan amount back from the accused, the accused issued three Cheques bearing cheque no.926839, cheque no. 926840 and cheque no.926841 of Rs.1,29,853/- , Rs. 1,29,853/- & Rs. 1,29,853/- respectively of State Bank of India dated 08/09/2022, 08/09/2022 & 08/09/2022 respectively. Thus, on perusal of the above facts of evidence, it reveals that the cheque no.926839, cheque no.926840 and cheque no.926841 produced on record vide Exh.8, Exh.9 & Exh.10 respectively bears the signature of the accused as a drawer and the name of complainant is mentioned as payee.

In view of all the facts of the evidence adduced above it transpires that the accused has admitted that he has a legal debt of Rs.1,29,853/- & Rs.1,29,853/- of the complainant and the cheque no.926839, cheque no.926840 and cheque no.926841 dtd. 08/09/2022, 08/09/2022 & 08/09/2022 respectively produced on record vide Exh.8, Exh.9 & Exh.10 is issued by the accused to the complainant for his legal debt. Hence, I humbly believe that the facts of the present issue have been proved by the complainant and **I answer the issue no.1 in affirmative.**

(9) **-: Issue No.02 :-**

Whether the Complainant proves beyond reasonable doubt that he has complied with the provisions of Section-138 (a) (b) (c) of the Negotiable Instrument Act ?

According to this issue no.2, if we consider the facts of evidence presented in this case, in such cheque return case, the cheque in question is a proof of the fact that the cheque is drawn of his own bank account maintained by the accused was given to the complainant to pay off his own legal debt or discharge his own legal liability. Thereafter, the complainant has to comply the provisions of Section-138 (a) (b) (c) of the Negotiable Instrument Act. The provisions of Section -138 of the Negotiable Instrument Act are as follow :-

Section 138 - Dishonour of cheque for insufficiency, etc., of funds in the account ;-

" *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and* *shall, without prejudice to any other provision of this Act, be punished with imprisonment for**[a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:***

***Provided that** nothing contained in this section shall apply unless,*

***(a)** the cheque has been presented to the bank within a period of* **six months (At present 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, as the case may be,makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, **[within thirty days]** of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

***(c)** the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within **fifteen days** of the receipt of the said notice.*

***Explanation.—**For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."*

The present accused issued the cheque no.926839, cheque no.926840 and cheque no.926841 to the complainant and it is produced on record vide Exh.8, Exh.9 & Exh.10 and on perusal of the said cheque, it is dated 08/09/2022, 08/09/2022 & 08/09/2022 respectively and on depositing the said cheque in the bank, the said cheque returned dishonoured on dtd. 06/12/2022, 08/09/2022 & 08/09/2022 respectively with endorsement "FUNDS INSUFFICIENT" and the said bank return memo is produced on record vide Exh.10, Exh.12 & Exh.13. Thus, in view of the evidence produced on record, the cheque given by the accused to the complainant in lieu of legal consideration of the complainant's debt was deposited by the complainant in his bank account at Rajkot within **"3 (three) months"** from the date of the cheque and the said cheque has returned dishonoured. Thus, in view of the above facts, the complainant has deposited the cheque given by the accused in the bank within three months from the date mentioned in the cheque. Hence, it is proved that the complainant has complied with the provision of **Section - 138 (a)** of the Negotiable Instrument Act.

Further the cheque no.926839, cheque no.926840 and cheque no.926841 produced vide Exh.8, Exh.9 & Exh.10 returned dishonored on dtd. 06/12/2022, 08/09/2022 & 08/09/2022 vide bank return memo produced vide Exh.10, Exh.12 & Exh.13. Further, the legal demand notice has been issued on dtd. 22/12/2022 to the accused within **30 days** of date of the receipt of the information by the complainant from the bank regarding return of dishonoured cheque. The office copy of the said legal demand notice is produced on record vide Exh.14. Hence it is proved that the complainant has sent the legal demand notice to the accused within **30 days** of the date of the receipt of the information of the cheque return by the Bank. Now in view of the above facts and circumstances, sufficient compliance of **Section-138 (b)** of the Negotiable Instruments Act has been done by the Complainant is hereby proved.

Further, on perusal of the evidence produced on record, it reveals that the legal demand notice dtd. 22/12/2022 vide Exh.14 has been issued within **30 days** of the date of receipt of the information by the complainant from the Bank regarding return of dishonoured cheque. The said legal demand notice was not served to the accused and the envelope returned on dtd. 26/12/2022. The postal R.P.A.D. slip is produced on record vide Exh.15 and the original returned envelope is produced on record vide Exh.16. Further, after receipt of legal demand notice by the accused, the accused did not reply the said legal demand notice either by himself or through his Advocate. Further the accused had not made the payment of the amount of the dishonoured cheque within **15 days** of the receipt of the legal demand notice. Thus, the present complaint is filed within time limit of one month after completion of **15 days** of the receipt of the legal demand notice by the accused. Hence, in view of the above facts, it is proved that the Complainant has complied with the provision of **Section-138 (c)** of the Negotiable Instrument Act.

According to the principles laid down by the Hon'ble Supreme Court in the case of ***Sarojkumar Poddar Vs. State (NCT of Delhi) (2007) 3, S.C.C. 693,*** the Complainant has to duly comply with the provisions of Section-138 (a) (b) (c) of the Negotiable Instrument Act. In view of the facts of the evidence adduced in this case, it is proved that the complainant has duly complied with the above said provisions. Hence, the principles laid down by the Hon'ble Supreme Court in the above case are applicable to the facts of the present case.

Thus, taking in to consideration all the above facts and circumstances, it is proved that the complainant has complied with the provisions of Section-138 (a) (b) (c) of the Negotiable Instrument Act. Therefore, I humbly believe that the complainant has proved the facts of issue no.2. **Hence, I answer the issue no.02 in affirmative.**

(10) **-: Issue No.03 :-**

Whether the accused proves that he has rebutted the presumptions under Section-118 and-139 of the Negotiable Instrument Act ?

In case of return of cheque, after prima facie proving the facts that the cheque was legally given to the complainant by the accused in payment of his debt or other liability, after ascertaining that the provisions of Section 138 (a) (b) (c) of the Negotiable Instrument Act have been duly complied with, presumption has to be drawn as per Section 118 and 139 of the Negotiable Instrument Act in favour of the complainant.

The statutory provision of Section 118 of the Negotiable Instrument Act are as under :-

Section 118 - Presumptions as to Negotiable Instruments.

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

(a) ***of consideration;*** *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) ***as to date;*** *that every negotiable instrument bearing a date was made or drawn on such date;*

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

(d) ***as to time of transfer;*** *that every transfer of a negotiable instrument was made before its maturity;*

(e) ***as to order of indorsements;*** *that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*

(f) ***as to stamp;*** *that a lost promissory note, bill of exchange or cheque was duly stamped;*

(g) ***that holder is a holder in due course;*** *that the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an SP offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.*

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.

Thus, after presumptions in favour of the complainant under Section 118 and 139 of the Negotiable Instrument Act, the onus is placed on the accused to rebut the said presumptions. The accused can rebut the presumptions by proving false the evidence produced by the complainant or he can rebut the presumptions by producing his own evidence.

Firstly, whether the accused has rebutted the presumption under Section-118 of the Negotiable Instrument Act ? In this regard,

In view of the facts of evidence produced on record, the accused has not raised any dispute that the cheque no.926839, cheque no.926840 and cheque no.926841 produced at Exh.8, Exh.9 & Exh.10 was not given by him to the complainant. Further, the accused has not raised any dispute regarding the cheques return reason of "FUNDS INSUFFICIENT" on the cheque no.926839, cheque no.926840 and cheque no.926841 produced in the present case. Hence, it is hereby proved that the present cheque no.926839, cheque no.926840 and cheque no.926841 has been issued by the accused to the complainant for his legal debt.

Further, in view of the facts of the evidence produced on record, the accused has not raised any dispute regarding the date of the cheque no.926839, cheque no.926840 and cheque no.926841 presented in this case. Hence, it is proved that the cheque presented in this case has been written by the accused to the complainant on the date mentioned in the said cheque.

Further, in view of the facts of the evidence produced on record, it is proved that the said cheque no.926839, cheque no.926840 and cheque no.926841 has been accepted after the date mentioned on it and before its date of maturity.

Further, in view of the facts of the evidence produced on record, it is proved that each transfer of the said cheque no.926839, cheque no.926840 and cheque no.926841 has taken place before the date of maturity of the said cheque.

Further, in view of the facts of the evidence produced on record, it is proved that the endorsement made on the said cheque no.926839, cheque no.926840 and cheque no.926841 has been made in the order in which they appear to have been made on that cheque.

Further, in view of the facts of the evidence produced on record, it is proved that the said cheque was duly stamped.

Further, in view of the facts of the evidence produced on record, it is proved that the cheque no.926839, cheque no. 926840 and cheque no.926841 presented in this case is produced from the proper custody of the complainant and it prima facie appears that the said cheque no.926839, cheque no.926840 and cheque no.926841 has been issued by the accused to the complainant for the payment of his legal debt. Hence, it is hereby proved that the complainant is the legally holder of the said disputed cheque.

Further, it is proved that the cheque no.926839, cheque no.926840 and cheque no.926841 in present case is given by the accused to the complainant for the payment of his legal debt. Further, it is not proved by the accused that the complainant has obtained the disputed cheque from him by fraudulently or by illegally or by committing any crime. Further, no defence has been taken on behalf of the accused that the said cheque was lost and the same has been illegally used or misused by the complainant. Therefore the accused has failed to rebut the presumption of **Section 118 of the N.I. Act.**

Now, Whether the accused has rebutted the presumption under Section-139 of the Negotiable Instrument Act ? In that regard,

Unless the contrary is proved, it shall be presumed that the holder of the cheque referred under Section-138 of the N.I. Act for discharge of his responsibility in whole or in part.

Further, if the cheque of the accused has been misused than the legal demand notice at Exh.14 issued by the complainant to the present accused regarding cheque return in which entire facts of the financial transaction are mentioned and the accused has not given any reply to this notice of the complainant and by not giving reply, the accused has not taken the defence of misuse of his cheque. Thus, the accused has not replied the notice issued by the complainant or cross-examined the complainant or given his statement on oath to defend himself.

Further, looking to the facts of the evidence produced on record in this case, the accused has not taken defence that the cheques produced at Exh.8, Exh.9 & Exh.10 does not bear his signature. Further, it is established by the ***Hon'ble Supreme Court in the case of Rohitbhai Jivanlal Patel Vs. State of Gujarat, 2019 (18) S.C.C. 106*** that when the drawer of the cheque has given the cheque after signing to the cheque holder or the payee and if he does not refuse his signature on the cheque, than the said cheque can be presumed to be issued in lieu of legal debt. Further, it is established by the ***Hon'ble Supreme Court in the case of Aps Forex Services Pvt. Ltd. Vs. Shakti International Fashion Linkers, 2020 (12) S.C.C. 724*** that when the accused has given the cheque and has admitted his signature on the said cheque than it can be presumed that the said cheque was given by the accused to the complainant in payment of his legal debt or in discharge of his legal obligation. Further on considering the judgment of the **Hon'ble Supreme Court in case of T. P. Murugan (Dead) Through Lrs. Vs. Bojan, (2018) 8 A.C.C., 469** it is laid down by the Hon'ble Supreme Court that when the accused has admitted to have issued the cheque and his signature on the cheque than the presumptions under

Section-139 of the Negotiable Instrument Act must is to be made in favour of the holder of the said cheque. Further, the ***Hon'ble Supreme Court has laid down in the case of Rangappa Vs. Sri Mohan, (2010) 11, S.C.C. 441*** that when the accused admits the issuance of cheque and his signature on the said cheque, it can be presumed that the cheque was given to the bearer of the said cheque for payment of his legal debt or liability. Now, in the present case the accused has not denied that he has given the disputed cheques to the complainant and also not denied his signature on the said cheques i.e. he has admitted his signature on the cheques and also admitted that he has issued the said cheque to the complainant. Thus, in view of the facts of the above evidence, the accused has accepted the facts that the above disputed cheques was given to the complainant by the accused and his signature was in the said cheques. Hence the above principles laid down by the **Hon'ble Supreme Court** in the above cases are applicable to the facts of the present case. Hence, the fact that the said cheques in present case was given by the accused for his legal dues to the complainant is hereby proved.

Further, it is laid down by the ***Hon'ble Supreme Court in the case of Hiten P. Dalal Vs. Bratindranath Banerjee, 2001 (6) S.C.C. 16*** that the onus is on the accused to rebut the presumption under Section 118 and 139 of the Negotiable Instrument Act.

Further, it is laid down by the ***Hon'ble Gujarat High Court in the case of Girishbhai Natwarbhai Patel Vs. State of Gujarat & Others, 2006 (1) D.C.r. 594*** that the onus is on the accused to rebut the presumption under Section 118 and 139 of the Negotiable Instrument Act and unless the presumption is rebutted by some definite and convincing evidence till then it is presumed that the accused has issued the cheque to the complainant in discharge of legal liability.

On further perusal of the record, it transpires that the accused in his defence has not cross-examined the complainant nor rebutted the evidence produced by the complainant. Further, the accused has not produced any documentary or oral evidence in his defence and thereby the accused has not rebutted the evidence produced by the complainant. Hence, I humbly believe that the principles laid down by the **Hon'ble Supreme Court and Hon'ble High Court** squarely applies to the fact of this case. Thus, in view of the above facts and circumstances, it is transpired that the accused has failed to rebut the presumption under **Section 139 of the Negotiable Instrument Act.**

Thus, in view of all the facts and circumstances discussed above, the accused has failed to rebut the presumptions under Section 118 and 139 of the Negotiable Instrument Act. Hence, the accused has failed to prove the issue no.3 and **I answer the issue no.03 in negative.**

(11) <u>-: Issue No.04 :-</u>

Whether the Complainant proves beyond reasonable doubt that the accused in this case has committed an offence punishable under Section-138 of the Negotiable Instrument Act ?

In view of the detailed discussion made in issue no.1 to 3 regarding the evidence produced in this case, it is hereby proved that the complainant is engaged in all kind of financial services and the accused was in financial needs to purchase a vehicle and therefore, contacted the complainant for a loan and therefore, the complainant has given loan vide loan agreement no. **RAJKTT002290001** and at the time of availing the loan signed loan agreement etc. documents and also given assurance of paying regular installments. But the accused has not paid loan amount as per agreed terms and condition. Further, when the complainant demanded the remaining loan amount back from the accused, the accused issued three Cheques bearing cheque no.926839, cheque no.926840 and cheque no.926841 of Rs.1,29,853/- , Rs. 1,29,853/- & Rs.

1,29,853/- of State Bank of India dated 08/09/2022, 08/09/2022 & 08/09/2022 respectively and assured the complainant that the said cheque will be surely honoured on its presentment on date 08/09/2022, 08/09/2022 & 08/09/2022. Further, keeping trust on the words of the accused, the complainant presented the said cheque with its Bank account at Rajkot and the cheques returned dishonored for the reason "FUNDS INSUFFICIENT" and the said intimation of the dishonor of cheques was received by the complainant by bank return memo dated 06/12/2022, 06/12/2022 & 06/12/2022. Thereafter the complainant through his Advocate sent legal demand notice dated 22/12/2022 to the accused which was not served to the accused and the envelope returned on dated 26/12/2022 and even after receipt of demand notice the accused had failed to comply with the demand notice and committed offence punishable under Section 138 of the Negotiable Instrument Act, 1881. Thus, it is proved that the disputed cheques is issued by the accused in favour of the complainant to pay legal dues of the accused. Moreover, the cheques given by the accused to the complainant returned dishonoured on being presented by the complainant in his bank and the complainant issued legal demand notice in order to recover the amount of the returned cheques and though the said notice was duly served upon the accused, the accused has not returned the amount of the said cheques to the complainant is hereby proved by the complainant in this case. Further, it is hereby proved that the complainant has complied with **Section- 138 (a) (b) (c)** of the Negotiable Instrument Act. Instead, in this case the accused has been failed to rebut the presumption of **Section 118 and 139** of the Negotiable Instrument Act against him.

Further, it is held by the ***Hon'ble Gujarat High Court in R. Special Criminal Misc. Application No.6721 of 2023 in case of Manoj Vasudev Sompura Vs. State of Gujarat*** that, if sufficient opportunity had been given to the accused to cross-examine the Complainant, although the accused remained absent and did not take the cross-examination of the complainant, then it is justified that the Hon'ble Court close the right of the accused to cross-examine the complainant.

Further, the **Hon'ble Gujarat High Court** has held that in the said judgment that, if the accused is given sufficient opportunities to record his further statement, although the accused remain absent and does not record his further statement, than it is justified that the Hon'ble Court close the right of the accused to record his further statement.

Thus, though sufficient and reasonable opportunities given to the accused to cross-examine the complainant, the accused has not remained present and cross-examined the complainant. Hence, it is justified that the right of the accused to cross-examine the complainant is closed in this case. The principles laid down in the above judgment are applicable in the present case.

Further, is held by the ***Hon'ble Gujarat High Court in Criminal Misc. Application No.19862/2015 in the case of Sharad Jethalal Savla Vs. State of Gujarat & Others*** that judgment and order of Conviction can be passed against the accused in the absence of the accused. Now, in view of the facts of the present case, the accused is not remaining present in the Court. Hence, the principles laid down in the above judgment are also applicable in the present case.

Thus, taking in to consideration all the above facts and circumstances in the present case, the facts that the accused in the present case has committed an offence punishable with fine under Section - 138 of the Negotiable Instrument Act are proved against the accused beyond reasonable doubt. Therefore, in my humble view the complainant has proved the facts of issue no.4. Hence, **I answer the issue no.04 in affirmative and for issue no.05** final order in the interest of justice as follow:-

-: Final Order :-

1) The **accused - Jignesh Hemantsinh Dholakiya,** Age:- 33 years, Occupation:- Driving, Residing at:- A.G. Quarter Block No.9, Quarter No.63, Near Prashil Park, Near University Gate, Rajkot - 360005 is hereby held guilty and convicted for the offence punishable under Section-138 of the Negotiable Instrument Act, 1881, the under Section - 255(2) of the Criminal Procedure Code,1973.

2) The present judgment is declared as per Section 353(7) of Cr.p.c. in the absence of the accused, so no adjournment kept for hearing on the point of sentence.

Signed and Pronounced in the open Court today on 18th August 2026, at Rajkot.

Date : 18/08/2026 **[Girishbhai Parshotambhai Bhoi]**
Place : Rajkot **9th Additional Chief Judicial Magistrate,**
Rajkot.
[Code No.GJ00987]

-: Regarding Sentence :-

In view of the above facts and circumstances and after having hear both sides I have gone though many policies regarding awarding sentence in cases filed u.s.138 of N.I.Act.. Maximum punishment which may be inflicted on conviction of offence U/s.138 of the N.I. Act is 2 years or with fine which may extend to twice the amount of cheque or both. As cheques in question contains amount of Rs.1,29,853/- (Rupees One Lakh Twenty Nine Thousand Eight Hundred Fifty Three Only), Rs. 1,29,853/- (Rupees One Lakh Twenty Nine Thousand Eight Hundred Fifty Three Only) & Rs. 1,29,853/- (Rupees One Lakh Twenty Nine Thousand Eight Hundred Fifty Three Only), and accused has not repaid that amount, according to this court as to subserve, object of the enactment, awarding of simple imprisonment of 1 year is right and correct sentence. Too lenient punishment may make mockery of justice. Too draconian a penalty might not only result in injustice but may be fraught with other ramification which might defeat the very object of enactment. Punishment must not be unjust or to high but at the same time, it should not be so low which may recedes deter of punishment. Court while awarding punishment has to strike balance by keeping fact and circumstances in which offence happened and impact of it on accused as well as society at large. Further-more, Hon'ble Supreme Court as well as Gujarat High Court in catana of judgments has asked trial Courts to award compensation in cases of N.I.Act invariably. Same principle has been enunciated by Hon'ble Supreme Court in case of Pankaj Nagajibhai Patel. Same can be replicate herein thus. In our view this question does not now pose any practical difficulty. Whenever a Magistrate of the first class feels that the complainant should be compensated he can,after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code."

D). Further Hon'ble Supreme Court in case of R.Mohan2 held that Magistrate are empowered to impose sentence in default of compensation clause. Hence,In view of the above, in respect of point no. D in the interest of justice following order is passed by this Court.

-: Final Order On Sentence :-

1) The **accused - Jignesh Hemantsinh Dholakiya,** Age:- 33 years, Occupation:- Driving, Residing at:- A.G. Quarter Block No.9, Quarter No.63, Near Prashil Park, Near University Gate, Rajkot - 360005 is ordered to undergo **simple imprisonment for a period of 1 (one) year** under Section -138 of the Negotiable Instrument Act**.**

2) Further according to Section - 357(3) of Code of Criminal Procedure, 1973, the accused is hereby ordered to make payment of total amount of present disputed cheques of **Rs. 3,89,559/- (Rupees Three Lakh Eighty Nine**

Thousand Five Hundred Fifty Nine Only) to the complainant within **60 days** from the date of institution of the present Complaint till its realization and in case of default, the accused shall undergo **simple imprisonment for a further period of 3 (three) months.**

3) That the accused, having suffered the imprisonment as per section 428 of **Criminal Procedure code** be set at liberty.

4) In addition, whenever the accused of present Complaint appears, a copy of this Judgement be provided free of cost as per **Section - 363 (1) of the Criminal Procedure Code .**

5) Since the accused is not present today, and no application for exemption has been filed on their behalf, a sentenced warrant is ordered to be issued against the accused after the process fee is paid by complainant.

6) The bail granted to the accused peviously is hereby cancelled, and order is issued to take the accused into judicial custody.

Date : 18/08/2026 [Girishbhai Parshotambhai Bhoi]
Place : Rajkot 9th Additional Chief Judicial Magistrate,
Rajkot.
[Code No.GJ00987]