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Presented on : 12-08-2024
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Decided on : 05-08-2026

Duration:

YY	MM	DD
01	11	24

IN THE CITY SESSIONS COURT AT AHMEDABAD
COURT NO.24

CRIMINAL APPEAL NO.648 OF 2024

Appellant : **Rajubhai @ Rajendraprasad Shivabhai Patel**
Age-62 years, Retired,
R/o. Village Desasan, Po. Aagiyol,
Tal. Himmatnagar, Dist. Sabarkantha.

Versus

Opponents :

1] **Prakashchandra L. Shah**
Adult, Occupation: Business,
2/B, Panchratna Society,
Behind Vasna Bus Stand,
Vasna, Ahmedabad.

2] **The State of Gujarat**
3037/1, Gita Colony,
Jashodanagar, Ghodasar,
Ahmedabad.

Appearance :
Mr. H.C. Pandya, Learned Advocate for the Appellant-accused.
Mr. B.D. Thakkar, Learned Advocate for the Opponent No.1.
Learned **APP** for the State / Opponent No.2.

J U D G M E N T

[**Appeal u/s. 415 of B.N.S.S. (Sec. 374 of Cr.P.C.)**

1. Present appeal has been preferred by the appellant (original accused) against the judgment and order dated 15.04.2024 passed by the Learned Additional Chief Metropolitan Magistrate, Court No.34 (N.I. Act), Ahmadabad, in Criminal Case No. 27927/2017 whereby the Learned Trial Court has convicted the appellant for the offense punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'Act' for short) and imposed simple imprisonment for the term of one (01) year. The Ld. Trial Court also directed the appellant-accused to pay cheque amount of ₹16,50,000/- along with interest @ 9% towards compensation to the original complainant to be paid within sixty (60) days. The Ld. Trial Court further directed that if the accused fails to pay the compensation amount to the complainant, the accused shall undergo further simple imprisonment for a period of three months.

2. The brief facts of the complaint u/s. 138 of N I Act are as under :-

2.1 The accused is engaged in agriculture at Desasan and is serving as a Senior Clerk in a High School situated at Agiyol, Taluka Himmatnagar, District Sabarkantha. He also owns a school near Bayad, runs a cattle farm and a trust, and is engaged in the business of sale and purchase of land. The complainant's husband, Mr. Prakashchandra

Shah, is engaged in the business of money lending at Modasa. The accused had earlier borrowed money from the complainant in the year 2009 and had repaid the same in installments. As the accused frequently visited the complainant's residence, both parties were well acquainted. In October 2016, owing to financial difficulties in his business, the accused requested a hand loan of ₹16,50,000/-, which the complainant advanced relying upon his assurance. Thereafter, upon repeated demands for repayment, the accused issued three cheques drawn on IDBI Bank, Himmatnagar Branch, namely: (i) Cheque No. 029630 dated 03.01.2017 for ₹5,50,000/-, (ii) Cheque No. 029629 dated 04.01.2017 for ₹5,50,000/-, and (iii) Cheque No. 029628 dated 04.01.2017 for ₹5,50,000/-, assuring the complainant that the cheques would be honored on presentation.

However, when the complainant presented the said cheques through UCO Bank, Khanpur Branch, Ahmedabad, all three cheques were dishonored on 07.02.2017 with the endorsement "Insufficient Funds." The complainant thereafter issued a statutory notice dated 02.03.2017 to the accused through Registered Post A.D. Despite receipt of the notice, the accused failed to make payment of the cheque amounts within the prescribed period.

2.2 Therefore, the complainant has preferred the complaint against the accused under Section 138 of the Negotiable Instruments Act before the Learned Trial Court, which was registered as C.C. No. 27927/2017.

SUMMONS AND PLEA OF ACCUSED

3. The Learned Trial Court has issued the process and on appearance of the accused, necessary compliance on providing documents to the accused person and him plea was recorded wherein the accused person denied the charges leveled against him and claimed for trial. Therefore, Ld. Trial Court proceeded further as per law.

4. The complainant furnished following oral as well as documentary evidence in support of the complaint.

(A) ORAL EVIDENCE:

No.	Name of Witness	Exh. No.
1	Affidavit in form of Examination-in-chief of the complainant	04

(B) DOCUMENTARY EVIDENCE:

No.	Details of documents	Exh. No.
1	Original Cheque No. 029630	12
2	Original Cheque No. 029629	13

3	Original Cheque No. 029628	14
4	Return Memo of Cheque No. 029630	15
5	Return Memo of Cheque No. 029629	16
6	Return Memo of Cheque No. 029628	17
7	Office Copy of the Legal Notice	18
8	Original Returned Postal Cover of the Notice	19 20
9	Notarized Copy of the Writing/Undertaking executed by the Accused	23
10	Photocopies of HDFC Bank Deposit Receipts (Total – 3)	24
11	Complainant's Money Lending Registration Certificate	27
12	Original Writing/Undertaking executed by the Accused	28
13	Copy of the Statement of Mehsana Urban Co-operative Bank Ltd.	29
14	True copy of Security Document furnished by the Accused	30
15	Copy of the Complainant's Income Tax Return for the Year 2017-18	31

5. After cross-examination of the complainant was over, the complainant furnished closing Pursis. Thereafter Further Statement of the accused u/s 313 of Cr.P.C was recorded, wherein the accused mainly answered the questions in negative and mainly stated that complainant misused his blank cheque and false complaint is filed.

6. Thereafter, the Learned Trial Court after considering the evidence on record and arguments of both sides, declared the judgment and convicted the accused for the offense under Section 138 of the Negotiable Instruments Act and imposed simple imprisonment for the term of one year. The Ld. Trial Court also directed the appellant-accused to pay cheque amount of ₹16,50,000/- along with interest @ 9% towards compensation to be paid within sixty (60) days. The Ld. Trial Court further directed that if the accused fails to pay the compensation amount to the complainant, the accused shall undergo further simple imprisonment for a period of three months.

7. Being aggrieved and dissatisfied with the said judgment and order of conviction, present appeal is preferred before this court by the accused.

Submissions advanced on behalf of both the parties.

8. While filing the present Appeal, the Ld. Advocate for the appellant-accused has submitted his written arguments at **Exhibit-31**.

8.1 Ld. Advocate for the appellant-accused has vehemently argued that the complainant failed to prove that he had advanced a hand loan of ₹16,50,000/- to the appellant. Though the complainant stated during cross-examination that he would produce documents showing payment of the loan, no such documentary evidence, bank statements or financial records were ever produced before the Trial Court. It is, therefore, contended that the alleged loan transaction has remained unproved and that the complainant failed to establish the existence of a legally enforceable debt. It is further submitted that the complainant relied upon a stamp paper and certain handwritten writings to support the alleged loan transaction. However, according to the appellant, the said documents neither carry any legal sanctity nor prove the alleged liability. The stamp paper pertains to an earlier transaction of the year 2009, which, according to the complainant himself, had already been repaid. The contents of the said document are inconsistent with the complainant's own deposition and, therefore, cannot be relied upon. It is also argued that the document produced at Exh. 28 is merely an unregistered writing without proper execution and that the complainant failed to produce the original title document allegedly deposited as security.

Learned advocate has further argued that the complainant admitted during cross-examination that his Income Tax Returns do not disclose the alleged loan transaction, nor do they indicate the source of funds. He was also unable to satisfactorily explain his income or financial capacity and repeatedly stated that he would have to consult his accountant. It is submitted that, in the absence of proof of financial capacity and supporting documentary evidence, the alleged cash loan cannot be believed.

It is also contended that the complainant's wife, who had no independent source of income, has filed two separate complaints against the appellant claiming substantial amounts allegedly advanced by her. According to the appellant, these complaints, along with the present case, have been filed in collusion by misusing blank signed cheques which had been issued as security in connection with an earlier transaction that had already been settled. The learned advocate has further submitted that the complainant himself is facing criminal proceedings alleging preparation of forged documents, and therefore the documents relied upon by him cannot be treated as reliable. It is also argued that the complainant has filed several cheque dishonor cases against different persons without maintaining proper accounts or producing supporting records, thereby creating serious doubt about the genuineness of his claim.

Placing reliance upon the decision of the Hon'ble Supreme Court in **Rangappa v. Mohan**, it is submitted that although a statutory presumption arises under Sections 118 and 139 of the Negotiable Instruments Act, such presumption is rebuttable. The accused is only required to raise a probable defense on the touchstone of preponderance of probabilities and need not prove his defense beyond reasonable doubt. It is argued that the appellant has successfully created serious doubts regarding the complainant's case, whereas the complainant has failed to prove the alleged loan transaction by cogent and reliable evidence. It is, therefore, prayed that the conviction recorded by the Trial Court be set aside and the appellant be acquitted.

8.2 Per contra, Learned Advocate for respondent No.2-original complainant has opposed the appeal and submitted that the impugned judgment and order of conviction passed by the learned Trial Court is legal, proper and based on correct appreciation of the oral as well as documentary evidence on record. Learned advocate for the complainant orally submitted that the complainant has successfully proved, by both oral as well as documentary evidence, that the cheque amounts represented a legally enforceable debt payable by the accused. It was further submitted that the accused has failed to create any doubt in the complainant's case and has not led any rebuttal evidence to displace the statutory presumption under the Negotiable Instruments Act. Towards discharge of the legally enforceable debt, the appellant issued the cheques in question, which came to be dishonoured on presentation. Thereafter, the statutory demand notice was issued within the prescribed period, but despite service of notice, the appellant not made the payment of the cheque amount. It is further submitted that the complaint under Section 138 of the Negotiable Instruments Act was filed within the prescribed period of limitation and that all the mandatory requirements of Section 138 of the Act stand duly complied with. According to the complainant, there is no material on record to establish misuse of the cheque or to rebut the statutory presumptions available in favor of the complainant. It is therefore argued that the learned Trial Court has rightly held the appellant guilty upon proper appreciation of the evidence and settled legal principles, and hence the conviction and sentence awarded by the Trial Court deserve to be confirmed and the appeal be dismissed.

8.3 Against this, learned APP for the respondent no.1-State has argued that the findings and reasons given by the Ld. Trial Court while convicting the appellant is absolute, legal and meritorious and in accordance with oral and documentary evidence came on record which does not suffer from any irregularity, illegality and perversity therefore, the same cannot be required any interference by this first Appellate Court. Thus, the appeal is required to be rejected and the judgment and order passed by the Ld. Trial Court is requested to be upheld.

9. Now, considering the foregoing submissions of both the sides and the reasons mentioned in appeal memo and the evidence on record, following points are arise for determination of the present appeal.

1. Whether the complainant proves that the accused has issued alleged three cheques drawn on IDBI Bank, Himmatnagar Branch, namely: (i) Cheque No. 029630 dated 03.01.2017 for ₹5,50,000/-, (ii) Cheque No. 029629 dated 04.01.2017 for ₹5,50,000/-, and (iii) Cheque No. 029628 dated 04.01.2017 for ₹5,50,000/- to the complainant towards discharge of legal liability and by not honoring the said cheque the appellant-accused has committed offense punishable under Section 138 of The Negotiable Instruments Act, 1881 ?

2. Whether the judgment and order dated 15.04.2024 passed by the Ld. Trial Court in Criminal Case No.27927/2017 is illegal, erroneous, contrary to the evidence on record and requires to be interfered with by this Court ?

3. What order ?

10. My findings on the above points for the reasons stated below:

1. In affirmative.

2. In negative.
3. As per final order.

R E A S O N S

POINTS NOS. 1 & 2:

11. Now, prior to re-appreciate the evidence in present case on hand, this Court has referred legal Provisions of the N. I. Act, which are read as under:

Section 138 of the N. I. Act:
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 is 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 provisions 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 6 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 ma 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 or other liability means a legally enforceable debt or other liability.

UNDISPUTED FACTS.......

12. Considered the submissions, evidence, particularly the cross examination on behalf of the accused and further statement u/s 313 of Crpc. of the accused.

Before entering into the reasons, it is to be noted that there is no dispute regarding ......

the cheque given by the accused,

the signature of the accused/appellant on the cheque

the bank account, maintained by the accused

the cheque being dishonored with an endorsement of "fund insufficient"

notice has been served to the appellant / accused within the limitation provided in the Negotiable Instrument Act.

In further statement, the accused has denied all the questions and evidence against him. It's fact on record that the notice of complainant is received by the accused.

Conclusion:

13. This court has considered the submissions of both side, the record of the trial court as well as of the appeal. While deciding appeal, it is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an

independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The aforesaid principle is laid down by the Hon'ble Supreme Court in the case of **Padam Singh V/s State of UP reported in AIR 2000 (SC) Page 361**. The law clearly expects that the appellate Court to dispose of the appeal on merits not merely by perusing the reasons of trial Court assigned in the judgment, but cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and the finding recorded by the trial Court are consistent with the material on record.

14. The case of the complainant before the learned Trial Court was that there existed transactions between the parties and in discharge of legally recoverable dues arising therefrom, the accused had issued cheques in favor of the complainant. Upon presentation of the said cheques, the same came to be dishonored for the reason “Funds insufficient” and therefore statutory proceedings under Section 138 of the Negotiable Instruments Act came to be initiated. In support of the complaint, the complainant produced complaint at Exh.1, affidavit in lieu of examination-in-chief of complainant at Exh.4, and documentary evidence including original cheques at Exhs.12 to 14, return memos at Exhs.15 to 17, statutory demand notice at Exh.18, original postal cover at Exh.19 & 20.

15. Upon appreciation of the record, it clearly emerges that the complainant had established that the disputed cheque was presented within the period of validity and the same were dishonored with endorsement "Funds insufficient". Thereafter, statutory notice contemplated under Section 138 of the Negotiable Instruments Act was issued through Registered A.D. within the prescribed period and despite expiry of statutory period, payment was admittedly not made. Thus, foundational requirements contemplated under Sections 138 and 142 of the Negotiable Instruments Act stand duly complied with.

16. It further emerges from the record that the accused has not effectively disputed that the disputed cheques belonged to his account and that the signature appearing thereon was his own. Once execution of cheques stands admitted or proved, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act become operative. At this stage, reference may profitably be made to the judgment of the Hon'ble Supreme Court in **Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513**, wherein it has been held that presumptions under Sections 118 and 139 are rebut table in nature, however mere denial of consideration or debt would not suffice and the accused is required to

bring on record such facts and circumstances which make non-existence of debt reasonably probable. The Hon'ble Supreme Court has further held that though the accused is not required to prove his defense beyond reasonable doubt, he is nevertheless required to establish a probable defense on the touchstone of preponderance of probabilities.

17. Further, in the case of **Rangappa v. Sri Mohan**, the Hon'ble Supreme Court has reiterated that once issuance of cheque and signature thereon are admitted, presumption under Section 139 extends not merely to issuance of cheque but also to existence of legally enforceable debt or liability unless rebutted by acceptable evidence. Similar principles have also been reiterated in **Bir Singh v. Mukesh Kumar** holding that even where particulars in cheques are filled subsequently, once signed cheques is voluntarily handed over, presumption under law continues to operate.

18. Therefore, the central issue requiring consideration in the present appeal is whether the accused has succeeded in rebutting the statutory presumptions available in favor of the complainant.

19. The principal contention raised by the Appellant is that the complainant failed to establish legally enforceable debt, that the cheque was allegedly not issued towards lawful liability regarding transactions. Upon careful examination of the evidence, this contention does not merit acceptance.

20. In the present appeal, the complaint has been produced on oath at Exhibit-04. The complainant has stated the facts of the complaint in his deposition. Since the facts of the complaint have been narrated in Paragraph-1, repetition thereof is not necessary. In the present case, the accused has been subjected to detailed cross-examination by the complainant, which is taken on record.

21. The principal defence of the accused in the present case is that, according to the facts stated in the complaint, no amount towards the cheque was outstanding from the accused, and that the accused had signed and handed over the cheque, in which a false amount was subsequently filled in and the present false case was filed. It is further contended that the accused had no monetary transaction or liability towards the complainant.

As regards the defence raised by the accused, upon perusal of the record, the following facts emerge:

➔ The complainant filed the present complaint against the accused on 20.04.2017. As per the facts stated in the complaint at Exhibit 1, the accused is engaged in agricultural activities and is also serving as a Senior Clerk in the High School situated at Mota Anganole, Taluka

Himatnagar, District Sabarkantha. He also owns a school building/property. The accused maintains a cattle shed for cows and buffaloes, runs a trust, and is also engaged in the business of purchase and sale of land.

➔ The complainant's husband, Prakashchandra, is engaged in the business of lending money at Modasa. In the year 2009, the accused had borrowed money from the complainant by way of a hand loan and had repaid the same in instalments. Since the accused used to frequently visit the complainant's house, the complainant became acquainted with him.

➔ As the accused was carrying on business on a large scale and had suffered financial difficulties in his business, he was in need of money and therefore requested the complainant for financial assistance. Believing the representation of the accused, the complainant advanced a hand loan of Rs.16,50,000/- in October 2016 to the accused.

➔ Thereafter, when the complainant repeatedly demanded repayment of the hand loan advanced to the accused, the accused came personally before the complainant and, towards repayment of his legally enforceable debt/liability, issued and signed the following cheques drawn on IDBI Bank, Himatnagar Branch:

Cheque No. 029630, dated 03.01.2017, for Rs.5,50,000/-;
Cheque No. 029629, dated 04.01.2017, for Rs.5,50,000/-;

Cheque No. 029628, dated 04.01.2017, for Rs.5,50,000/-.

Thus, the accused issued three cheques aggregating to Rs.16,50,000/- and assured the complainant that the said cheques would be duly honoured upon presentation.

➔ Relying upon such assurance, the complainant deposited the said cheques with UCO Bank, Khanpur, Ahmedabad, for encashment. Thereafter, the said three cheques were returned/dishonoured.

➔ On 07.02.2017, the disputed cheque was returned unpaid with the endorsement mentioned on the cheque. Despite this, the accused did not repay the amount to the complainant, and therefore the present complaint has been filed.

22. In this case, the defence submitted by the appellant has been taken on record. From the facts of the complaint and the evidence produced on record, it appears that the appellant suffered financial difficulties in his business and, therefore, was in need of money. The complainant had advanced a hand loan of Rs. 16,50,000/- to the appellant. For repayment of the said amount, the appellant had handed over the disputed cheques of the present case to the complainant and had assured him that the amount would be repaid. The complainant has stated that he had advanced the hand loan amount to the appellant as alleged in the complaint, and this fact is required to be proved beyond doubt.

23. If the record of the case is examined, it appears that at Exhibit-28, the complainant has produced a writing as documentary evidence. The said writing bears the signature of the appellant and has been written and signed by him. In the said writing, the appellant has clearly stated that he had taken Rs.16.50 lakh in cash from the complainant during October 2016 and that he would repay the said amount whenever demanded by the complainant. As security for the said amount, the appellant had also handed over the original document relating to his mother's land, Block No. 77 (old Survey No. 84). It was stated that the original document would be returned after repayment of the amount. The appellant has also given an assurance in the said writing that he would repay the amount. The said writing is dated 29.10.2016. The signature appearing on the said writing is the same as the signature appearing on the disputed cheque in the present case. Thus, when the disputed cheque is examined, the signature appearing thereon is the same signature as that made by the appellant on the said writing.

24. Furthermore, the appellant has alleged that the said writing was got executed by the complainant by threatening and intimidating him, or that it was forcibly obtained from him. However, no evidence has been brought on record in the defence case to establish that the said writing was obtained by force or coercion. If the said writing were false or fabricated, the appellant could have taken appropriate legal action against the complainant. However, no evidence of any such legal proceedings or complaint against the complainant has been brought on record.

25. I have carefully considered the submissions advanced on behalf of the appellant and the evidence brought on record. From the cross-examination of the complainant, it emerges that the complainant has stated that he is carrying on the business of a small dairy at Modasa in his own name and that he possesses the requisite licence for carrying on such business. He has further stated that he has been carrying on the said business for the last 20 to 22 years and that the accused is also having a cattle shed.

26. The complainant has further deposed that he maintains three savings bank accounts, namely, with Modasa Bank Co-operative Bank, Modasa Nagrik Bank and Khanpur Eco Bank. He has stated that, whenever any person is required to withdraw money from the said accounts, the same may be withdrawn by way of cheque. The complainant has also admitted that the document in question bears the signature and seal affixed before the

Notary. It is further admitted that no witness has signed the said document. The complainant, however, has disputed the suggestion that the signature of the accused appearing on the said document is forged or fabricated.

27. It is pertinent to note that the accused has admitted his signatures on the disputed cheques as well as on the documents produced on record by the complainant. The defence raised by the accused is that the disputed cheques were given as security and were subsequently misused by the complainant. However, except for making such a suggestion, the accused has not led any cogent, reliable or convincing oral or documentary evidence to probabilise such defence.

28. In the opinion of this Court, the cross-examination of the complainant, when considered in its entirety, does not assist the defence of the accused. On the contrary, the material admissions elicited therein, coupled with the admitted signatures of the accused on the disputed cheques and the relevant documents, lend support to the case of the complainant. Once the execution of the disputed cheques and the signatures appearing thereon are admitted, the statutory presumptions operating in favour of the complainant under the Negotiable Instruments Act come into play. The burden thereafter shifts upon the accused to rebut such presumptions by raising a probable defence on the touchstone of preponderance of probabilities. The accused, however, has failed to discharge the said burden. No substantive material has been brought on record to establish that the cheques were issued merely by way of security, that there was no subsisting legally enforceable liability, or that the complainant had misused the said cheques.

29. It is also significant that the accused has not disputed his signatures appearing on the documents produced by the complainant. Nor has he been able to dislodge the material contents thereof by leading any cogent evidence. Thus, the documentary evidence produced by the complainant assumes considerable significance in determining the existence of the underlying transaction and the liability of the accused.

30. The document produced on record, particularly Exhibit 28, records that in October 2016 the accused had received an amount of Rs.16,50,000/- from the complainant in cash and that the accused was liable to repay the said amount. The said document further contains an acknowledgment regarding the original document relating to the land standing in the name of the mother of the accused, which was handed over to the complainant by way of security. The said original document has also been brought on record in the present proceedings.

31. The aforesaid circumstances, when examined cumulatively, establish a consistent and coherent chain of evidence in support of the complainant's case. The execution of the relevant documents and the signatures of the accused thereon have not been satisfactorily disputed. The accused has also failed to produce any material of sufficient probative value to rebut the statutory presumptions in favour of the complainant.

It is well settled that the accused is not required to disprove the complainant's case beyond reasonable doubt. The burden upon the accused is only to rebut the statutory presumption by raising a probable defence on the touchstone of preponderance of probabilities.

32. The further defence raised by the appellant-accused is that the disputed cheques had been handed over to the complainant merely by way of security and that, at the relevant point of time, there was no legally enforceable debt or liability payable by the accused to the complainant. However, this defence has not been substantiated by any cogent or reliable evidence.

33. It is pertinent to note that the accused has not placed on record any notice issued to the complainant calling upon him to return the alleged security cheques, nor has the accused produced any material to demonstrate that he had initiated any civil or criminal proceedings against the complainant alleging misuse of such cheques. In the absence of any such contemporaneous action or supporting evidence, the plea that the disputed cheques were merely security cheques cannot, by itself, be accepted.

On the contrary, the accused has admitted his signatures on the disputed cheques. Once the execution of the cheques and the signatures thereon are admitted, the statutory presumptions contemplated under Sections 118 and 139 of the Negotiable Instruments Act, 1881, operate in favour of the complainant. The burden, therefore, shifted upon the accused to rebut the said presumptions by bringing on record a probable and credible defence.

34. In the present case, the accused has failed to discharge the said burden. The accused has neither established the facts constituting his defence nor produced any cogent documentary or oral evidence in support thereof. Even in the course of cross-examination of the complainant, the accused has failed to elicit any material admission or circumstance sufficient to discredit the complainant's case or to probabilise the defence set up by him. No rebuttal evidence of any substance has been brought on record.

35. It is further significant that the accused has not examined any defence witness, nor has he produced any documentary evidence or other material in support of his contention that the cheques were issued only by way of security and that no legally enforceable debt or liability existed in favour of the complainant.

36. Thus, the accused has failed to rebut, even on the touchstone of preponderance of probabilities, the statutory presumptions arising in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act. The defence raised by the accused that the disputed cheques were merely security cheques and were not issued towards discharge of any legally enforceable debt or liability, therefore, does not inspire confidence and cannot be accepted. Consequently, the said defence raised by the accused is liable to be rejected.

37. The appellant has further raised a contention that the statutory notice issued by the complainant was returned unserved and, therefore, the mandatory notice contemplated under Section 138 of the Negotiable Instruments Act was not served upon the accused. On this ground, it is contended that the complaint is not maintainable and deserves to be dismissed. I am unable to accept the said contention.

38. In the present case, the complainant had issued a statutory notice calling upon the accused to make payment of the amount covered by the dishonoured cheque. The said notice was sent by registered post to the correct and proper address of the accused. The relevant postal record and the endorsement regarding the return of the notice have been produced on record.

39. A perusal of the statutory notice makes it abundantly clear that the complainant had specifically referred to the dishonoured cheque issued by the accused towards discharge of his legally enforceable debt or liability and had demanded payment of the cheque amount. The notice was admittedly addressed to the correct and proper name and address of the accused and was dispatched by registered post within the prescribed period. The fact that the notice was subsequently returned unserved, therefore, cannot by itself ensure to the benefit of the accused.

40. The aforesaid aspect is squarely covered by the principles laid down by the Hon'ble Supreme Court in **C.C. Alavi Haji v. Palapetty Muhammed and Another**, Criminal Appeal No. 767 of 2007. The Hon'ble Supreme Court, while considering the provisions of Section 138 of the Negotiable Instruments Act, has explained the legal consequences of issuance of statutory notice by registered post to the correct and proper address of the drawer.

41. In view of the law laid down by the Hon'ble Supreme

Court, once the complainant establishes that the statutory notice was duly addressed to the correct and proper address of the accused and was dispatched by registered post within the prescribed period, the complainant is deemed to have discharged his statutory obligation. The presumption of due service thereafter operates in favour of the complainant, and the burden shifts upon the accused to establish that the notice was in fact not received by him for reasons attributable to circumstances beyond his control.

42. In the present case, the accused has failed to rebut the said presumption. Except for raising a bare contention that the notice was returned unserved, the accused has not produced any cogent or reliable evidence to establish that the notice was sent to an incorrect address or that he had no knowledge of the proceedings. The statutory notice having been dispatched to the correct and proper address of the accused, the mere return of the notice cannot be treated as a ground to defeat the complaint under Section 138 of the Negotiable Instruments Act.

43. It is also significant that the Hon'ble Supreme Court in **C.C. Alavi Haji (supra)** has observed that a drawer who claims that the statutory notice was not served upon him cannot ordinarily take advantage of such plea when, upon receiving knowledge of the complaint, he does not make payment of the cheque amount within the prescribed period.

In the present case also, despite having knowledge of the proceedings, the accused has neither paid nor deposited the cheque amount within the prescribed period. Thus, the accused cannot be permitted to take advantage of his own omission and contend that the complaint is liable to fail merely because the statutory notice was returned unserved.

44. In these circumstances, the complainant having duly complied with the statutory requirement of issuing the notice within the prescribed period and having dispatched the same by registered post to the correct and proper address of the accused, the statutory presumption of service operates against the accused. The accused has failed to rebut the said presumption by leading any satisfactory evidence.

45. In the present case, there is no contention on the part of the appellant that the signature appearing on the cheque is not his or that he had not issued the cheque in question. Therefore, such a defense raised by the appellant cannot be accepted. Accordingly, this Court is of the view that the complaint filed under Section 138 of the Negotiable Instruments Act is maintainable, and the contention raised by the appellant in this regard cannot be accepted.

46. Upon considering the complaint filed by the complainant, the documents produced at Exhibits 12 to 31, the complainant's deposition, the statement of the accused under Section 313 of the Cr.P.C.,

47. The appellant, in his statement dated 17-02-2023 recorded under Section 313 of the Cr.P.C., has stated that the complainant had given a false statement. The complainant and the accused had business relations. Since the very beginning, the complainant used to obtain blank signed cheques from the accused. The complainant had arranged matters in such a way that he misused those cheques. The accused has stated that he had borrowed money from the complainant and had repaid the entire amount with interest. The complainant has nevertheless misused the security cheques and filed this false case.

48. Further, while considering the complainant's cross-examination, it appears that there were business dealings between the complainant and the accused. The accused has specifically stated that he had taken a loan of ₹16,50,000 from the complainant. Thus, it stands proved that there was a financial transaction between them. The appellant has contended in his defense that he had repaid the loan amount with interest to the complainant. Despite this, the complainant misused the security cheques obtained from the accused and filed the present false case. Therefore, according to the accused, he deserves to be acquitted.

49. On considering the statement of the accused, it is clear that the accused has admitted having borrowed money from the complainant. The accused also states that he repaid the loan amount with interest, however, the complainant has filed the present case by using the security cheques given by the accused. It is also alleged that the complainant has misused the security cheque. If the appellant had in fact repaid the loan amount to the complainant, some documentary evidence to that effect ought to have been produced on record. However, during the cross-examination of the complainant, the accused failed to establish that the loan amount had been repaid.

50. Further, if the complainant had misused the security cheque given by the accused, the accused ought to have lodged a complaint before the Police Station or the Court. However, no documentary evidence has been produced on record to show that any such complaint was ever made. Likewise, during the complainant's cross-examination, the accused failed to establish that the complainant had misused the security cheque. Thus, although the accused has contended that the cheque was issued as a security cheque and that the complainant misused it, as the accused has failed to prove these facts, the defense taken by the accused cannot be accepted.

51. Having regard to the defense raised by the appellant and the submissions advanced by him before the learned Trial Court, the appellant has taken a specific defense that the present case is not maintainable on the ground stated by him. However, upon considering the entire evidence available on record and the defense raised by the appellant before the learned Trial Court, it is evident that the appellant has not produced any documentary evidence in respect of his bank account to establish that, at the relevant time when the cheque in question was dishonored, sufficient funds were available in his account to honor the said cheque. No cogent or reliable rebuttal evidence has also been produced by the appellant in support of such contention.

52. In the absence of any documentary or other reliable evidence establishing that sufficient balance was available in the appellant’s account at the relevant time, the said contention raised by the appellant cannot be accepted. Accordingly, I am not inclined to accept the said defense of the appellant.

53. Upon an overall appreciation of the evidence on record, this Court finds that the learned Trial Court has rightly appreciated the evidence and has recorded the conviction of the appellant. The conviction recorded and the sentence imposed by the learned Trial Court do not call for any

interference by this Court.

54. The accused has also failed to establish that the cheque was obtained by fraud, coercion, misuse or were issued under circumstances excluding liability. Mere suggestion or bald assertion that cheque was not issued towards enforceable debt is insufficient to rebut statutory presumptions. The law consistently recognizes that rebuttal must emerge either from defense evidence or from circumstances appearing from complainant's own case making existence of debt improbable.

55. Upon independent re-appreciation of the evidence, this Court is unable to find any inconsistency or contradiction of such magnitude in the complainant's evidence so as to destroy the substratum of the complaint. The findings recorded by the learned Trial Court appear to be based upon proper appreciation of oral and documentary evidence and settled principles governing proceedings under Section 138 of the Negotiable Instruments Act.

56. Therefore, this Court is of the considered opinion that the complainant successfully established foundational facts giving rise to statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act and the accused failed to rebut such presumptions by raising a probable defense on the standard of preponderance of probabilities.

No perversity, illegality or material irregularity is demonstrated in the impugned judgment so as to warrant interference in appellate jurisdiction.

57. Thus from the evidence of the complainant as well as from the entire evidence, relations with the complainant are admitted, the signature of the accused on the cheque is undisputed, the cheque is returned with remark "Funds insufficient". It may be noted that the cheque was dishonored because the Funds insufficient and not for any other reason and no reason is given by the accused for such failure of payment. Thus, now at this stage the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence. Hence what appears from record is that, though opportunity given to the accused he has totally failed to prove that the cheque amount was returned by him and no amount was outstanding, except a mere oral submission that the cheque was issued as security. Hence the defense raised by the appellants without any supportive evidence does not inspire confidence or meet the standard of 'preponderance of probability'.

58. At this juncture, the case of Jain P. Jose vs Santosh CRIMINAL APPEAL NO. OF 2022 (@ SLP (Crl.) No(s). 5241 OF 2016) is required to be referred, where in the Hon'ble Supreme Court has considered the judgments, the relevant paragraphs of the above said judgment is reiterated below....

The judgment under challenge reasons that the appellant – Jain P. Jose had admitted that the entries/details in the cheque bearing No. 054984 dated 02.02.2010 for a sum of Rs.9,32,000/- (Rupees Nine Lakhs Thirty Two Thousand Only) drawn on South Malabar Gramin Bank, Olarikkara Branch, Thrissur, were not in the hand of the accused/respondent- Santosh. Hence, the presumption under Sections 118 and 139 of Negotiable Instruments Act, 18811 does not arise. Accordingly, the High Court agreed with the reasoning given by the trial court that the appellant – Jain P. Jose, was not able to adduce sufficient evidence that he was in a position to advance a loan of Rs. 9 lakhs to the respondent. The High Court relied on 1 For short, the N.I. Act. the judgment of this Court in "John K. Abraham v. Simon C. Abraham", (2014) 2 SCC 236.

It is an accepted and admitted position that the respondent accepts his signature on the aforesaid cheque. Interestingly, the respondent had issued notice marked as Exhibit -P3, in which he has stated that the appellant - Jain P. Jose had given loan of Rs. 5 lakhs, albeit, claimed that the loan was taken by the respondent's brother-in-law – Anil. In the notice (Exhibit -P3), the respondent claimed that he had given the aforesaid cheque signed by him to his brother-in-law – Anil from whom he had taken a loan of Rs. 5 lakhs. Subsequently, his brother-in-law - Anil was involved in criminal cases.

In the aforesaid factual background, we do not think that the High Court was right in holding that the onus was not on the respondent to show that the debt was neither due nor payable.

Xxxxxxxxxx

Referring the Sections of the N.I. Act, a three Judges Bench of this Court in "T. Vasanthakumar Vs. Vijaykumari" (2015) 8 SCC 378, has held:

"9. Therefore, in the present case since the cheque as well as the signature has been accepted by the accused-respondent, the presumption under Section 139 would operate. Thus the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not, return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

This decision, refers to an earlier judgment of this Court in “Rangappa vs. Sri Mohan” (2010) 11 SCC 441, which elucidating on the presumption under Section 139 of the N.I. Act, observes that this includes a presumption that there exists a legally enforceable debt or liability. However, the presumption under Section 139 of the N.I. Act is rebutable and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

A recent decision of a three Judges Bench of this Court in “Kalamani Tex and Another vs. P. Balasubramanian” (2021) 5 SCC 283, examines the scope and ambit of the presumption under Sections 118 and 139 of the N.I. Act, to hold:

“ 14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error when it called upon the respondent complainant to explain the circumstances under which the appellants were liable to pay. Such approach of the trial Court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.

xx xx xx

17. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite "Bir Singh v. Mukesh Kumar”, where this court held that:

“Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

18. Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of ‘preponderance of probability’. In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants’ defence and upholding the onus

imposed upon them in terms of Section 118 and Section 139 of the NIA." In view of the aforesaid factual and legal position, we set aside the impugned judgment with an order of remit to the High Court, to decide the appeal on the basis that the appellant is entitled to the benefit of presumption under Section 139 of the N.I. Act. Thereupon, the High Court will consider the evidence and the material on record to decide whether the offence under Section 138 of the N.I. Act is established and made out.

59. Further, as per law laid down by the Hon'ble Supreme Court in the case of **Prem Chand Vijay Kumar Vs. Yashpal Singh & Anr,** reported in **(2005) 4 SCC 417**, for securing conviction under the N.I. Act, 1881, complainant has to prove following ingredients of the offence under Section 138 of the N.I. Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonored;
(b) that the cheque was presented within the prescribed period;
(c) that the demand for payment of the money was made by giving a notice in writing to the drawer within the stipulated period; and
(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

As discussed previously, the compliance of provisions of law are not disputed. Considering the record, all the ingredients for the offense under section 138 of The Negotiable Instrument Act proved by the complainant remains unrebutted.

60. At this stage it would be preferable to go through Section 139 and 118 of the Negotiable Instruments Act.

139. **<u>Presumption in favour of holder</u>**. -- 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.

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 endorsements. -- 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 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 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.

61. Considering the record, It is to be noted that the evidence given by the complainant, oral as well as documentary is not rebutted by the accused, either by examining his witness or by producing any document. even during cross examination of the complainant, the Ld.Advocate has failed to brought on record that the cheque amount was not outstanding. Nothing contrary to the evidence of complainant is brought on record or indicating that the complainant has misused blank signed cheque of the appellant-accused. The cheque produced on record and the return memo along with other documents are considered by this court, the signature of the accused therein is not disputed. It is unexplained as to why the cheque bearing signature of accused was with the complainant, no reply to the notice has been given in the present case , no legal action appears to be taken against the complainant by the accused regarding the misuse of his cheque. The accused has totally failed to rebut the evidence on record given by the complainant.

62. As discussed earlier, there is a presumption U/s. 139 of N.I.Act in favor of holder of the Cheque, that Cheque was drawn for discharge of debt or liability, as discussed in case of **Rangappa vs Mohan** and other judgment, "Once the execution of Negotiable Instrument is either proved or admitted, then the Court has to draw presumption available U/s.139 of N.I. Act to the effect that Negotiable Instrument Act has drawn for valid consideration"

63. Hon'ble Supreme Court, in CRIMINAL APPEAL NOS. 1233-1235 OF 2022 (Arising out of SLP (Crl.) Nos. 7430-

7432/2022 @ D. No. 13470 of 2019) in case of **P. RASIYA VERSUS ABDUL NAZER AND ANR,** has held that**......**

Once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary.

64. In the case of I**Rajaram S/o Sriramulu Naidu (Since Deceased) Through Lrs. Vs. Maruthachalam (Since Deceased) Through L.rs. 2023 LiveLaw(SC)46,** It is held that, once the execution of cheque is admitted, section 139 of the N.I. Act mandates a presumption that the cheque was for discharge of any debt or other liability and the presumption under section 139 is a rebut table presumption and the onus is on accused to raise the probable defense. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

65. In the case between **Murugan Versus Bojan** reported in 2018(0) AIJEL-SC 62547 where in para-8 and 9 it is stated that....

We have heard Senior Counsel for both parties, and perused the record. Under section 139 of the N.I. Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability. This presumption is a rebutable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan.

The appellants have proved their case by over- whelming evidence to establish that the two cheques were issued towards the discharge of an existing liability and legally enforceable debt. **The respondent having admitted that the cheques and Pronote were signed by him, the presumption under S.139 would operate. The respondent failed to rebut the presumption by adducing any cogent or credible evidence. Hence, his defence is rejected.**

66. Hon'ble Supreme Court in the case of **"Rangappa v. Mohan"** reported in AIR 2010 SUPREME COURT 1898 has held that,

(B) Negotiable Instruments Act (26 of 1881), S.138 - DISHONOUR OF CHEQUE - Existence of legally recoverable debt or liability - Is matter of presumption u/S.139.

PARA 14. "In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability."

" However, there can be no doubt that there is an initial presumption which favours the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebutable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard of proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

67. As held by Hon'ble Supreme Court and as per the sec. 118 and 139 of The Negotiable Instrument Act, obligatory burden is cast upon the court to presume that the cheque in question was issued by the accused in discharge of the legally enforceable debt. Under said facts and circumstances on record, it was for the accused to rebut the evidence, which he failed to do. Mere oral defense by the accused that the complainant has misused his blank signed cheque and no amount was outstanding, without any supporting evidence, is not sufficient to rebut the said presumption. The duty is cast upon the accused to rebut the said presumption but he has failed. The accused is not even able to raise a probable defense.

68. Hon'ble Supreme Court in the case of **Sampelly Satyanarayan Rao V/s Indian Renewable Energy Development Agency** has held that, <u>mere statement of the accused may not be sufficient to rebut the presumption</u> and postdated cheque is well recognized mode of payment.

69. Present complaint is filed under Section 138 of N.I. Act, therefore, once the execution of cheque is proved then there is a statutory presumption that cheque is issued towards the legally enforceable debt. Unless, it is contrarily proved by the accused, thus accused has to prove that cheque was not issued towards any legally enforceable debt and burden on accused to prove said fact. The learned Trial Court has analyzed the evidence adduced by the parties, considered the judgments produced and after hearing both the party, arrived at the factual finding that the accused had duly issued the cheque stated in the complaint and exhibited during the evidence, in favor of the complainant, in discharge of a debt or liability, the cheque was presented to the bank for the payment within the period of its validity, and cheque has been returned unpaid due to "Funds insufficient". Statutory notice was issued, which was served on the accused,

70. The Hon'ble Gujarat High court, In the case between **Giridhbhai Natvarbhai Patel vs. State of Gujarat** and others has held that....

(A) Negotiable Instruments Act, 1881 (XXVI of 1881) - Secs. 138 and 139 - Offence of return of cheque - Presumption that cheque was issued in discharge of existing liability - It is for the drawer of cheque to rebut the presumption by cogent evidence - No evidence led by accused to rebut the presumption - Held, trial Court erred in acquitting the accused by holding that complainant had not proved liability of accused - Order of acquittal set aside.

Had there been no liability on the accused, then, in the first instance, on receipt of the very notice for making payment from the complainant, the accused could have stated without mincing words that there exist no liability.

71. In the case of **A.k.Vijaya Kumar Versus R. Mohan with R.Mohan Versus A.k.Vijaya Kumar**, reported in 2012(8) SCC 721 Hon'ble supreme Court has held that.....

- Sec. 138 - Dishonour of cheque - Contention by accused that blank cheque was given by way of security is misused by complainant -

Considering on facts that stand taken by accused is absent in his reply to notice, contention rejected - Conviction confirmed.

72. In the present case the accused has failed to prove that his blank signed cheque has been misused by the complainant, without any supporting evidence, therefore, the said allegation is not tenable.

73. In the case on hand, it is to be noted that, as per complaint the accused issued three cheques drawn on IDBI Bank, Himmatnagar Branch, namely: (i) Cheque No. 029630 dated 03.01.2017 for ₹5,50,000/-, (ii) Cheque No. 029629 dated 04.01.2017 for ₹5,50,000/-, and (iii) Cheque No. 029628 dated 04.01.2017 for ₹5,50,000/-, assuring the complainant that the cheques would be honored on presentation. cheques issued by the accused, containing his signature, the account maintained by him. It is proved by the complainant from the bank endorsement on return memo that the cheque mentioned in the complaint and produced during the evidence was issued from the account of the accused which was dishonored due to reason mentioned as “Funds insufficient”, notice was served on the accused. The accused failed to substantiate the defense raised at later stage and the complainant has proved his case by oral as well as documentary evidence, the accused/appellant failed to rebut the same.

74. In the case on hand as discussed above in detail, the Ld.

Trial court has rightly come to the conclusion that the cheque was issued against the legal enforceable debt as, except a mere defense that the blank cheques given for the security purpose is misused by the complainant, had not led any probable defense neither from the evidence or material submitted by the complainant or from the circumstances. Hence, the evidence on record, coupled with the presumption under law establishes that the Cheque was issued towards discharge of legally recoverable debt and the appellant has not rebutted the said presumption, mere statement of the accused that the blank cheque given for security is misused, without any supporting evidence, in the said circumstances and the evidence, is not sufficient. Thus, considering the evidence on record, facts and circumstances of the present case, the authorities discussed above and the presumption being not rebutted by the accused. Thus, the authorities relied upon by the learned Advocate for the appellant-accused are not helpful in the present case.

75. On re-appreciating the entire evidence on record and appreciating it again, this Court finds Learned trial Court's reasons as totally in consonance with the provisions of law. The appellate Court ordinarily does not interfere with the impugned judgment of conviction under Section 138 of the Negotiable Instruments Act unless the trial Court's reasons are totally erroneous, or in ignorance of settled legal position, or contrary to the evidence and documents on record or it is patently illegal leading to grave miscarriage of justice or manifestly unjust or unreasonable. It is a basic canon of offense punishable under Section 138 of the Negotiable Instruments Act that mere denial of passing of consideration is not enough to prove defense. The accused is burdened heavily with a presumption under Section 139 of the Negotiable Instruments Act that cheque so received by the complainant is towards legally enforceable debt and the person received it is holder in due course. The accused has to discharge this burden. In present case, as noted herein above, the accused is failed to do so.

76. In present case, considering the oral and documentary evidence, the Court below has rightly drawn the presumption U/s.139 and 118 of N.I.Act and arrived at conclusion that accused has totally failed to rebut the presumption and therefore, held the present appellant/accused guilty. The present appellant/accused has failed to bring and display merit in this appeal. Learned trial Court has addressed the issues and appreciated the evidence in its true perspective. Present appellant has failed to show palpable illegality in the impugned judgment of conviction and recording of the punishment. In result thereof, issue No.1 is answered in affirmative and issue No.2 in negative, hence this court pass following final order in view of issue No.3.

O R D E R

(1) The present Criminal Appeal is hereby dismissed.

(2) The judgment of conviction and order of sentence dated 15.04.2024 delivered by the learned Additional Chief Metropolitan Magistrate (Negotiable Instruments Act), Court No.34, Ahmedabad in Criminal Case No.27927 of 2017 is hereby **confirmed** and **affirmed**.

(3) The appellant-accused has failed to make out any case warranting interference with the impugned judgment and order. Accordingly, the conviction recorded by the learned Trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and the sentence imposed thereunder, are hereby maintained.

(4) The bail bond furnished by the appellant during the pendency of the present appeal stands cancelled. The appellant / accused is ordered to surrender before the Ld. Trial Court i.e. the Ld. Additional Chief Metropolitan Magistrate (Negotiable Instruments Act), Court No.34, Ahmedabad within 30 days from the date of this order and on failure to surrender, the Ld. Trial Court shall issue non-bailable warrant against the accused for the execution of above said imprisonment order.

(5) The amount, if any, deposited by the appellant before the learned Trial Court or before this Court pursuant to the provisions of the Negotiable Instruments Act or under any interim order shall be dealt with by the learned Trial Court in accordance with law.

(6) A copy of this judgment be supplied free of cost to the appellant-accused forthwith.

(7) The Record and Proceedings of Criminal Case No.27927 of 2017 be transmitted back immediately to the learned Trial Court along with a copy of this judgment for information and necessary compliance.

(8) Appeal stands disposed of accordingly.

Signed and pronounced in the open Court today on this
5th day of **August, 2026**.

Sd/-

Date :- 05-08-2026
Place:- Ahmedabad.

[B. H. Ghasura]
Additional Sessions Judge,
Court No.24,
City Civil & Sessions Court,
Ahmedabad.
(Unique I.D. Code No.GJ00983)

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