

MHMM120245372024



Received on : 23/10/2024
Registered on : 23/10/2024
Decided on : 22/10/2026
Duration : 01 Y 11 M 29 D
Exh. No. : 52

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS,
06TH COURT, MAZGAON, MUMBAI
(Presided over by : A. D. Thorat)

- a) Serial number of case : 0608602/SC/2024
- b) Date of commission of offence : 17/10/2024
- c) Name of complainant : **M/s. Aristo Industries Pvt. Ltd.**
Add.:- 3002/30, Club Aquaria
Tower – A, Devidas Lane, Borivali
(W), Mumbai – 400 092.
Through its authorised
representative
Mr. Himanshu Vrajlal Ganatra
- d) Names of accused : **1. Vihita Chem Pvt. Ltd. (Company)**
Add.: GIDC, Ankleshwar, 305,
GIDC, Ankleshwar – 39 002.
Also having Address at
3709/1 & 2, GIDC, Ankleshwar,
Ankleshwar – 393 002.
- 2. Mr. Mafatlal Manganbhai Patel**
(Director & Authorized signatory of
accused No.1)
Add.: C/o. Vihita Chem Pvt. Ltd.
GIDC, Ankleshwar, 305, GIDC,
Ankleshwar – 39 002.
- 3. Mr. Vital Mafatlal Patel**
(Director & Authorized signatory of
accused No.1)

Add.: C/o. Vihita Chem Pvt. Ltd.
GIDC, Ankleshwar, 305, GIDC,
Ankleshwar – 39 002.

4. Mrs. Savitaben Mafatlal Patel

(Director & Authorized signatory of
accused No.1)

Add.: C/o. Vihita Chem Pvt. Ltd.
GIDC, Ankleshwar, 305, GIDC,
Ankleshwar – 39 002.

5. Mrs. Neelam Vital Patel

(Director & Authorized signatory of
accused No.1)

Add.: C/o. Vihita Chem Pvt. Ltd.
GIDC, Ankleshwar, 305, GIDC,
Ankleshwar – 39 002.

- e) Offence complained of and proved : Under section 138 r/w. 141 of the Negotiable Instruments Act, 1881.
- f) Plea of accused : Accused pleaded not guilty and claimed to be tried.
- g) Final order : Accused are convicted.
- h) Date of final order : 22/06/2026.

Appearance :

For complainant - Advocate Hasmukh V. Shah
For accused - Advocate Aswad Patil / Virendra Rathod

JUDGMENT

(Delivered on 22/06/2026)

The accused are facing trial for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 (Hereinafter shall be referred to as 'the Act' for the sake of brevity and convenience).

2} The case of complainant in brief is as under:

The complainant company is registered under the Companies Act. Mr. Himanshu Vrajlal Ganatra is authorised to represent the complainant company in the present case. Accused No.1 is the company incorporated under the Companies Act carrying on business at the address mentioned in the complaint. Accused No.2 to 5 are the Directors and authorized signatories of accused No.1. They are responsible for day-to-day affairs and management of accused No.1 at all relevant times. The accused No.2 to 5 have placed orders with the complainant company. The complainant company sold and delivered goods worth lakhs of rupees in the name of accused No.1.

Rs.62,58,346/- was due and receivable from the accused. The accused No.1 with the consent and knowledge of accused Nos.2 to 5 had signed and issued four cheques in discharge of their liability and towards the payment of the goods sold and delivered to accused No.1. Cheques bearing Nos.001707 dated 16/08/2024 of Rs.08,66,592/-, No.001708 dated 23/08/2024 of Rs.21,67,678/-, No.001709 dated 16/09/2024 of Rs.19,87,038/- and No.001710 dated 23/09/2024 of Rs.19,86,099/-, drawn on ICICI Bank Ltd., Ankleshwar Branch in favour of complainant company (the above said cheques shall hereinafter be referred to as "the disputed cheques" for the sake of brevity and convenience). The disputed cheques were presented by the complainant company. The disputed cheques were dishonoured along with memos dated 24/09/2024 with remarks "Payment Stopped by the Drawer".

The demand notice was issued on 27/09/2024 which was sent to the accused by registered AD. Said notice was received by them. Despite receipt of notice, the accused have not made the payment. As the accused failed to pay the amount. Finally, the complainant prayed that the accused may be punished under section 138 of the Act.

3] My Learned Predecessor issued process against accused on 18/02/2025 after considering the complaint, verification statement of the complainant and arguments of advocate of the complainant. The accused appeared before the Court on 05/03/2025. Plea of accused was recorded on 05/03/2025 below Exh.15. The accused pleaded not guilty and claimed to be tried.

4] The complainant company has examined Mr. Himanshu Vrajilal Ganatra as CW-1 below Exh.7 and filed evidence closed pursis at Ex.48. The statements of the accused recorded below Ex.39 to 43 by their Advocate. They did not wish to examine any witness.

5] After going through the facts and circumstances of the case, following points arise for my determination, findings of which are recorded followed by the reasons :

Sr. No.	Points	Findings
1	Whether the complainant proves that cheque Nos.001707 dated 16/08/2024 of Rs.08,66,592/-, No.001708 dated 23/08/2024 of Rs.21,67,678/-, No.001709 dated 16/09/2024 of Rs.19,87,038/- and No.001710 dated 23/09/2024 of Rs.19,86,099/-, drawn on ICICI Bank Ltd., Ankleshwar Branch were issued by accused for discharge of any debt or legally enforceable liability towards the complainant ?	Proved

2 Whether the complainant proves that the accused dishonoured the disputed cheques, and after receiving notice did not repay said amount within stipulated period ? Proved

3 What order ? Accused are convicted.

REASONS

6] The complainant company has examined Mr. Himanshu Vrajlal Ganatra as CW-1 below Exh.7 and filed evidence closed pursis at Ex.48.

7] The complainant society has relied upon following documents, in support of the complaint :-

- | | | |
|-----|---|------------------|
| 1. | Copy of board resolution | Exh.17 |
| 2. | Copy of minutes of meeting | Article – A |
| 3. | Four copies of tax invoices along with Certificate u/s.65 B of the Indian Evidence Act | Exh.18 (colly.) |
| 4. | Four copies of e-way bills along with Certificate u/s.65 B of the Indian Evidence Act | Exh.19 (colly.) |
| 5. | Copy of ledger account along with Certificate u/s.65 B of the Indian Evidence Act | Exh.20 (colly.) |
| 6. | Four disputed cheques | Exh.21 to Exh.24 |
| 7. | Four cheque returned memos | Exh.25 to Exh.28 |
| 8. | Copy of statutory demand notice | Exh.29 |
| 9. | Six copies of postal receipts | Exh.30 (colly.) |
| 10. | Two A. D. Cards | Exh.31 (colly.) |
| 11. | Six copies of track consignments along with Certificate u/s.65 B of the Indian Evidence Act | Exh.32 (colly.) |

AS TO POINT NOS. 1 AND 2 :

8] First of all, I would like to mention sections 139 and 118(a) of the Act which provides certain presumptions. Once, it is proved that the

cheque has been executed and issued, then there are presumptions that it was for discharge of liability and for the consideration, unless the contrary is proved. Thus, the said presumptions are rebuttable. The said presumptions are not presumptions of guilt. The accused can rebut the same by leading cogent evidence. For this end, accused need not enter into the witness box or lead an independent documentary evidence. He may rely upon testimony of witness for the complainant and documents of the complainant. The accused has to rebut the said presumptions not beyond shadow of reasonable doubt, but to the extent of preponderance of probability.

9] Before starting discussion of oral evidence, it would be proper to go through the documents filed by the complainant company and to see whether conditions as contemplated in the Act are complied with by the complainant. The complainant filed original cheques on record issued by accused and they are at Exh.21 to 24. The disputed cheques belonged to the accused and signature of the accused is also not disputed. The cheque return memos Exh. 25 to 28 show that disputed cheques returned unpaid due to "Payment Stopped by Drawer" in the account of accused. The date of dishonour of disputed cheques is 24/09/2024. The demand notice is issued on 27/09/2024. The demand notice is issued within prescribed limit. The complaint is filed on 18/10/2024. The documents on record therefore shows that the complainant has complied with the conditions mentioned in the Act.

10] The defence taken by the accused in present case can be gathered from the statement u/s. 313 of the Code of Criminal Procedure, 1973 and from the cross-examination of the complainant. The accused has taken following defences;

- i. The material received was defective.
- ii. The disputed cheques were issued for security.
- iii. Accused have not received the demand notice.

11] **Defence No.1 :-** The material received was defective : The complainant company has filed on record resolution at Ex.17 which shows that Mr. Himanshu Vrajlal Ganatra authorized to file the present case. Exh.18 (Colly.) are the tax invoices which show that the material was supplied to the accused. It has stamp of the accused company. Exh.19 are the e-way bills which show that material was supplied to the accused No.1 and it has stamp of the accused No.1. Exh.20 is the ledger account supporting the case of complainant. These documents are filed along-with certificate u/s. 63 of The Bharatiya Sakshya Adhiniyam, 2023.

Therefore, the complainant has also filed the documents in addition to the documents which are required to be filed under the Act.

The accused have neither disputed that accused Nos. 2 to 5 were directors and they were responsible for day to day business of the accused No.1. The authority of CW-1 Himanshu is also not under challenge. The disputed cheques were returned due to 'payment stopped by drawers' is also not under challenge. The accused in the cross-examination of CW-1 Himanshu suggested that some of the material supplied was not of good quality. The CW-1 Himanshu denied the said suggestion. It is clear from the suggestion that the accused had received the material from the complainant company. The accused failed to lead any evidence which shows that they had raised dispute regarding the quality of the material received by them. The accused also failed to show from the cross-examination of the CW-1 Himanshu that

the quality of the material supplied was not good.

The accused have not challenged the invoices or e-way bills on record. The accused asked the CW-1 Himanshu regarding filing of lorry receipts and transport details. Though, the said details are not available on record but it is the accused themselves who had admitted the supply of material and therefore it is not necessary for the complainant to file those documents on record.

In the background, it is important to refer B. M. Basavraj Vs. Srinivas S. Dutta, reported in 2016 SCC Online SC 2004, wherein it has been observed by the Hon'ble Supreme Court that;

“Once the appellant files a complaint on the basis that he was holding the aforesaid cheques as holder in due course which were admittedly given by the respondent to the appellant and the said cheques were dishonoured when they were presented for encashment to the Bank and he, further, is able to establish that due notice of the dishonour of the said cheques was given to the respondent as provided in law, there was a clear presumption in favour of the appellant that the money was due under the said cheques. It may be noted that there is no defence to the effect that the cheques were not issued by the respondent or the cheques do not bear its signatures or they were not presented properly for encashment.

In the aforesaid circumstances, it was not even necessary for the appellant to produce any document to the effect that it had fulfilled the obligation under the agreement which was entered into between the parties. The case was founded on the dishonour of the two cheques and not on the basis of the said agreement. Further, it was not a civil suit which was filed on the basis of the said agreement or any demand was raised for money on the ground that the agreement had been fulfilled. The case is that the payment was not released. It is here where the High Court has fell in legal error.”

Therefore, it would not be necessary on the part of complainant company to file each and every document on record, especially when it

has filed the documents required under the Act. Therefore, the above discussion makes it clear that defence taken by the accused is not established.

12] **Defence No.2** : The disputed cheques were issued for security : The CW-1 Himanshu denied in the cross-examination that the disputed cheques were issued for security purpose. He further denied that the disputed cheques were misused. The accused have not led any evidence to show as to how the disputed cheques landed into the hands of complainant company. The supply and delivery of the goods is not challenged by the accused. The accused raised objection regarding the quality of the goods supplied but failed to lead any evidence. Therefore record makes it clear that the material was supplied and delivered to the accused. The accused failed to show that the disputed cheques were issued for security purpose only. The record shows that the disputed cheques are issued in the month of August and September 2024 and the goods are delivered in the month of February 2024. Therefore, record does not show that the disputed cheques were issued for security purpose only. The accused did not dispute their stamp on the e-way bills.

9 The accused in the cross-examination of CW-1 Himanshu suggested that the complainant company did not give opportunity to the accused to resolve the dispute between them. CW-1 Himanshu denied the said suggestion. The said suggestion also makes it clear that the disputed cheques were issued toward legally enforceable debt and not as security only and therefore accused wanted to resolve the dispute between them.

The above discussion makes it clear that defence taken by the accused is not established.

13] **Defence No.3** : Accused have not received the demand notice : The accused suggested to CW-1 Himanshu that demand notice was not issued within time and it was never received by the accused. CW-1 Himanshu denied the said suggestion. Upon perusal of the complaint, demand notice, postal receipts and RPAD Cards, it can be seen that the address of the accused mentioned in all these documents are same. The accused appeared before the Court upon issuing summons on the address mentioned in the complaint. Therefore, the notice was issued on last known correct address of the accused. The disputed cheques are dishonored on 24/09/2024. The demand notice is issued on 27/09/2024. Therefore, it is issued within time.

In this background, it is necessary to refer the authority of **C. C. Alavi Haji vs Palapetty Mohammed (2007) 6 SCC 555**, wherein the Hon'ble Supreme Court held that,

"It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of criminal law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the GC Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in **Bhaskaran** case if the "giving of notice" in the context of Clause (b) of the proviso was the same as the

"receipt of notice" a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act."

It therefore clear that service of notice to the accused is effected or not, will not hamper the case of complainant. Therefore, the defence taken by the accused is not established.

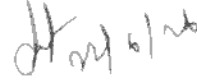
14] The complainant company has proved all material ingredients to prove its case against accused. Accused have not filed any document on record which support their defence. The accused failed to rebut presumptions. The complainant has successfully proved that disputed cheques were issued towards existing liability/legally enforceable debt and disputed cheques were not honoured and accused have committed the crime for which they are charged with. Consequently, I recorded my findings in affirmative on point nos.1 and 2.

15] While perusing the record, one copy of order of the Hon'ble Bombay High Court is seen in Writ Petition No.3560/2025. None of the parties informed regarding the decision in the said writ petition. After taking the copy of final order from the web site of the Hon'ble Bombay High Court, it can be seen that the accused had challenged the order of issue process. The Hon'ble Bombay High Court has disposed of the said writ petition as withdrawn on 30/03/2026. Neither accused nor their Advocate filed any application if they have preferred any appeal or other proceeding in the appellate Courts thereafter. Therefore, the case is being decided.

AS TO POINT NO. 3 :

16] The accused are liable for conviction of the offence punishable

u/s. 138 of the Act vide 278(2) of The Bharatiya Nagarik Suraksha Sanhita, 2023, in view of the affirmative findings recorded to the point nos. 1 and 2. So, I stop here to hear the accused on the point of quantum of punishment.



(A. D. Thorat)

Judicial Magistrate First Class,
6th Court, Mazgaon, Mumbai

Mumbai

Date : 22/06/2026

AS TO POINT NO. 3 :

17] The advocate for the accused submitted that minimum punishment be imposed. On the other hand, Advocate for complainant submitted that compensation to the extent of double the cheque amount may be granted.

18] The primary purpose of Section 138 of the Negotiable Instruments Act, 1881, is to promote the credibility and reliability of cheques as a mode of payment in commercial transactions and to deter the issuance of cheques without sufficient funds or with fraudulent intent. By providing a swift legal remedy, the provision aims to enhance trust and confidence in financial transactions, especially in business and trade. The main focus is compensatory rather than punitive, with the primary goal being the recovery of the cheque amount and compensation for the payee.

19] The cheque amount is Rs.70,07,407/-. The accused have paid Rs.6 lakh during the trial. The CW-1 Himanshu is present at the time of dictation and he also admitted that accused have paid Rs.6 lakh during the trial. Therefore, the amount of Rs.6 lakh is to be taken into consideration while passing the final order. The calculation of interest

for a year also approximately comes around Rs.6 lakh. Therefore, considering the amount paid by the accused, it would be proper to pay compensation of Rs.70,07,407/- rather than double the cheque amount. In view of Hon'ble Apex Court in Vijayanandan ..Vs.. Sadanandan, whenever accused is directed to pay compensation to the complainant U/s 357 (3) of the Code of Criminal Procedure, 1973, there should be clause of default of sentence. In the result, I pass the following order:

ORDER

1. Accused 1. **Vihita Chem Pvt. Ltd. (Company)**, No.2. **Mr. Mafatlal Manganbhai Patel**, No.3. **Mr. Vital Mafatlal Patel**, No.4. **Mrs. Savitaben Mafatlal Patel** and 5. **Mrs. Neelam Vital Patel** are convicted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 vide Section 278(2) of The Bharatiya Nagarik Suraksha Sanhita, 2023 and accused No.2 to 5 are sentenced to suffer simple imprisonment of 3 (Three) months.
2. Accused are hereby directed to pay severally and jointly compensation amount of Rs.70,07,407/- (Rupees Seventy lakh Seven Thousand Four Hundred Seven only) to the complainant M/s. Aristo Industries Pvt. Ltd. within 01 (One) month of the order, in default of payment of the compensation amount, the accused shall suffer simple imprisonment for 15 (Fifteen) days.
3. Bail bonds of accused stand surrendered.
4. True copy of the judgment be provided to accused free of costs.

- 14 - C. C. No.0608602/SC/2024

5. Issue warrant against accused Nos.2 to 5 in view of section 458(2) of The Bharatiya Nagarik Suraksha Sanhita, 2023.

(Judgment dictated and pronounced in open Court).



(A. D. Thorat),
Judicial Magistrate First Class,
06th Court, Mazgaon, Mumbai.

Date : 22/06/2026

Judgment dictated on :- 22/06/2026

Judgment signed on :- 22/06/2026



(A. D. Thorat),
Judicial Magistrate First Class,
06th Court, Mazgaon, Mumbai.

Date : 22/06/2026

ssk