



सत्यमेव जयते

RECEIVED ON	07/ 06/ 2019
REGISTERED ON	07/ 06/ 2019
DECIDED ON	31/ 07/ 2025
DURATION	
EXH.	

**IN THE COURT OF 7th ADDITIONAL CIVIL
JUDGE, RAJKOT**

C.C. NO. 8636/ 2019

Complainant :

Shri Jaykumar M Nimavat
Manager
Avdhut Credit Co-op Society Ltd,
Rajkot

VERSUS

Accused :

Shri Vallabhbhai Somabhai Sakariya
R/O:-Gitaben Batukbhai Niranjana Makaan ma,
Pooja Park Street No-1, Behind Reliance
Petrol Pump, Amdavad Highway, Maliyasan

Appearance :-

1] Learned Advocates Mr. S.R. Dethaliya for the Complainant

Offence U/S 138 of Negotiable Instrument Act, 1881

:: JUDGMENT ::

1. The complainant being registered under the Gujarat Co operative society Act has filed a present complaint through its manager, under section 142(1)(b) of The Negotiable Act, 1882 (In short N.I. act) for an offence under section 138 of N.I. Act, against the accused herein. That brief fact of the present complaint are, the accused is a member of the society and had approached the complainant for the purpose of procurement of loan and at the request of the accused, financial assistance was provided to him. The said loan to be paid back to the complainant bank including interest. In order to pay the total outstanding amount the accused herein drew & issued a **cheque No. 651773** out of his bank **RAJKOT NAGARIK SAHKARI BANK LTD. BEDIPARA BRANCH, RAJKOT** of Rs. **24,990** on **dtd. 18/04/2019**, with an assurance to clear the same on its presentation. Accordingly, the complainant herein deposited the said cheque in his bank, **SHRI RAJKOT DISTRICT CO-OPERATIVE BANK LTD, SAHKAR NAGAR BRANCH RAJKOT**, but the same stood dishonored with an endorsement **“INOPERATIVE ACCOUNT”, on dt 22/04/2019.** The complainant herein issued a legal notice to the accused herein u/s 138 of N.I.Act through his Ld. Advocate on **dt. 09/05/2019**, but the same returned unserved on 14/05/2019 thereafter the complainant himself served the notice to the accused wife on

18/05/2019. But, in spite of being duly served with the statutory notice, the accused herein neither replied to the same nor complied therewith. For the said reason, the complainant has filed the present complaint under section 142(1)(b) of the N.I.Act for an offence under section 138 of N.I.Act on **dt. 06/06/2019**.

2. Under the present complaint, the court has taken cognizance under section 204 of Cr.P.C. and issued process against the accused herein for an offence under section 138 of N.I. Act. Wherein after being served with the summons, however the accused not present before the Court and consequently the bailable warrant has been issued against him thereafter on 02/01/2025 accused appear before the Court and his plea was recorded under section 251 of Cr.P.C. vide Exh. 15. In order to prove the present case, the complainant has mainly produced the following evidence.

ORAL EVIDENCES

1.	Examination-in-Chief Complainant by way of affidavit	of	04
----	---	----	----

DOCUMENTARY EVIDENCES

1.	Original disputed cheque	18
2.	Return Memo	19
3.	Demand Notice	20
4.	Pay slip of sending legal notice	21

	through RPAD	
5.	RPAD cover	22
6.	Copy of Notice served personally	23
6.	Loan document	24
7.	Loan account statement	25
7.	Letter of Authority	17

3. That, the complainant has been provided with sufficient opportunity to produce his part of evidence and after producing the above evidence the complainant herein declared that, they do not want to produce more evidence.
4. It is pertinent to note here that, the process against the accused was duly served and he had not appeared before the court, therefore on application of the complainant the court had issued a Bailable warrant. The same was also served and consequently upon such a warrant the accused remained present before the court, and his plea was recorded vide Exh. 15 on dt. 02/01/2025. Then the matter was kept for cross-examination of the complainant. The accused did not appear in court nor any report was sought. For the said reason on dt. 19/02/2025, the complaint through application filed vide Exb. 26 prayed to this court that, right of an accused to cross-examine the complainant to be closed. Considering the continuous absence of the accused, this court had made an order closing the right of the accused to cross-examine

the complainant. It is pertinent to note that the accused had not even objected to any documentary evidence produced by the complainant. This court ordered that all the documentary evidence produced by the complainant be considered in evidence. On 09/03/2025 vide exhibit 27 the complainant declared their closing of evidence. Then the matter was adjourned for Further Statement of the accused. Thereafter, also the accused did not appear before this court, therefore the complainant vide Exb. 28 prayed to this court that the right of the accused to further statement be closed. Considering the conduct of the accused, this court was also constrained to dispense with the further statement of the accused, therefore the order regarding the same was made below Exh. 28. Later on, the matter was kept on final hearing, wherein Ld. Adv. for the complainant submitted their part of oral argument. But, the accused did not appear nor his Ld. Adv. conducted final arguments due to which the complainant filed an application to close his right to argue the matter vide exhibit 29 and the same was closed by this Court. Then the present complaint was kept for final decision.

5. Considering the complaint and the evidence produced on record following issues have been raised before this court in order to decide the present complaint.

ISSUES

- A. Whether prosecution proves beyond all reasonable doubt

that the accused herein has committed an offence u/s 138 of N.I.Act ?

B. What Order?

That answers of the above issues are given here under,

A. Affirmative

B. As per final order.

6. That, reasons for the answer of the above issues are discussed and determined in detail as under,

6.1) Issue No. A :- First of all, keep in mind the provision of Sec. 138 of N.I. Act, it provides a presumption that, **the drawer has committed an offence provided condition No. (a) to (c) of the proviso part are complied with.** It is pertinent to note that the first notice sent by the complainant to the accused came unserved thereafter the complainant served such notice to the wife of the accused personally. On this point it is necessary to go through the decision of Hon'ble Apex Court in the case of **C.C.Alavi Haji Versus Palapetty Muhammed 2007 (0) AIJEL-SC 39299** in which it was held that **"10 It is, thus, trite to say that where the payee dispatches the notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Sec. 27 of the G.C. Act would be attracted; the requirement of Clause (b) of proviso to Sec. 138 of the Act stands complied with**

and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque. Nevertheless, it would be without prejudice to the right of the drawer to show that he had no knowledge that the notice was brought to his address.” Thus, as per the decision of the Hon’ble Apex Court in the above stated case the complainant has sent the notice to the address of the accused which although came unserved was never contested by the accused that he had no knowledge of the notice and thereby it will be deemed to be the valid service for the purpose of section 138 proviso (b) of N.I. Act. Further, the accused has been provided with more than sufficient opportunities, initially to cross-examine the complainant herein and thereby contradict the complainant’s version as stated in the chief-examination as well as documentary evidences produced by the complainant and also to put forward a specific defense as may be available with the accused. But, the accused herein neither availed an opportunity by conducting cross-examination of the complainant nor in getting his further statement recorded before this court. It is pertinent to note that, for that aspect this court had given the accused sufficient opportunities, but in spite of the same he remained failed to grab the said opportunities. Accordingly, oral evidence in the form of chief-examination of the complainant as well as the documentary evidence produced by the complainant herein, neither been denied

nor disputed nor even tried to contradict the same by the accused herein and thus remain untouched on record. For the said reason, no reason appears on record as to why and for what reason prosecution evidence should not be believed or should be discarded or should not be considered.

In case of MANOJ VASUDEV SOMPURA V/s STATE OF GUJARAT, 2023 (0) AIJEL-HC 247313, before Hon'ble Gujarat High Court, the petitioner was original accused in Criminal Case filed under The Negotiable Instrument Act, had filed petition u/s 482 of Cr.P.C. In said case, the petitioner, like the accused in present case, had not appeared before the trial to cross-examine the complainant nor for Further Statement, therefore, the trial court had closed the rights of accused and convicted the accused under section 138 of N.I. act. The Hon'ble High Court has observed that,

“10. It is pertinent to note that the trial Court has recorded in the impugned judgment and order that the evidence of the complainant came to be closed vide closing purshis Exhibit-31. The Further Statement of the petitioner u/s. 313 of Cr.P.C. was recorded but, it could not be exhibited on the particular date. On the next date, neither the petitioner nor his advocate had remained present and therefore, his Further Statement, which was recorded on the earlier date and was also available on record, could not be exhibited. There is nothing on record

to suggest that the petitioner or his advocate had filed any application before the trial Court seeking exemption from the trial proceeding on the date when his Further Statement recorded u/s. 313 of Cr.P.C. was to be exhibited or seeking any modification in the Further Statement recorded on the earlier date before it is exhibited.

11. Before the trial Court, sufficient opportunities were granted to the petitioner to conduct the cross examination of the complainant. However, it appears that the petitioner had not availed of any of the opportunities provided by the trial Court to conduct cross-examination of the complainant. The trial Court had even imposed costs upon the petitioner for getting his right to conduct cross-examination of the complainant re-opened but, even thereafter, the petitioner had not availed of the opportunity to crossexamine the complainant for reasons best known to him. Further, the petitioner had not produced any evidence in his defence nor had submitted any oral / written arguments or had examined any witness in his defence.

12. From the above set of facts, it appears that the decision to not remain present on the next date after getting his Further Statement u/s. 313 of Cr.P.C. recorded on the earlier date and to not conduct crossexamination of the complainant in spite

of being afforded with sufficient opportunities, was a deliberate or voluntary decision taken by the petitioner. In the interregnum, there is nothing to suggest that the petitioner or his advocate had filed any application requesting the trial Court to grant him an opportunity to record his Further Statement u/s. 313 of Cr.P.C. or to conduct cross-examination of the complainant. The petitioner went into oblivion after the date when his Further Statement u/s. 313 of Cr.P.C. came to be recorded but before it could be exhibited. Therefore, the trial Court was left with no other option but to conduct the trial in the absence of the petitioner, who had deliberately or voluntarily chosen to evade the trial proceedings. Under these circumstances, there was no reason for the trial Court to issue any warrant against the petitioner, as contended by learned advocate for the petitioner. Moreover, the petitioner had not produced any evidence in his defence or had made any submissions either oral or in writing.”

Keeping in mind the same, it appears that the documents vide Exb. 17 - 25 are neither contradicted nor any endeavor was made by the accused to prove otherwise. Essential requirements as envisaged by Sec. 138 (a) to (c) appeared to have been duly complied with by the complainant and then after the complainant herein appears to have filed the present complainant within period of limitation as envisaged under section 142(1)(b) of N.I.Act. The

accused herein neither denied any facts touching an impugned cheque, its presentation within the period of limitation, its dishonored due to reason mentioned in Exh. 19, and then after within the period of limitation issuance of the statutory notice, with its due service to the accused, nor made any endeavor to prove the contrary. All the documentary evidence are corroborated by the complainant's unrebutted examination-in-chief. Looking at the present record, the factual aspect with which complainant herein has filed the present complaint appears to have been duly established on record. Accordingly, considering the present record, complainant herein clearly appears to remain succeeded to comply with the requirement of law as envisaged by clause No.(a) to (c) of Sec. 138 of N.I. Act. Accordingly offence under section 138 of N.I.Act stands proved to have been committed by the accused herein. Along with the same presumption as envisaged by Sec. 118 read with Sec. 139 of N.I.Act with reference to an impugned cheque also benefited to the complainant herein and which is against the accused herein not made any endeavor to prove the contrary to the said presumptions of law and thereby remained failed to rebut the said presumptions of law. Nothing appears on record which may be beneficial to the accused and against the case of the prosecution, which may rebut the above presumptions of law. Hence, considering the same, this court is of the certain view to answer the present issue No.A in "Affirmative".

6.2) Issue No. B :- That, considering the discussion as made in issue No.A it is proved on record that, the complainant herein succeeded in proving his case and guilt against the accused beyond all reasonable doubt. Even during the trial accused herein did not cooperate with to conduct the trial smoothly and conclude the same as envisaged by sec. 143(3) of N.I. Act. Hence, looking to the conduct on the part of the accused as well as merits of the present complaint, if for the present offence accused herein be imposed with six months simple imprisonment, than it appears to be just, proper and justifiable and this court is of the certain view that, by doing so justice would be seen to have been done to the complainant herein.

Accordingly, this court is of the certain view to pass the final order in the present Issue No.B as under :

-:: FINAL ORDER ::-

1. The present accused namely **Vallabhbhai Somabhai Sakariya R/O:-Gitaben Batukbhai Niranjanina Makan ma, Pooja Park Street No-1, Behind Reliance Petrol Pump, Amdavad Highway, Maliyasan** is hereby convicted u/s 255(2) of The Code of Criminal Procedure Code, 1973 for offence u/s 138 of The Negotiable Instrument Act, 188, and sentenced to undergo a **simple imprisonment for term of six months and shall also pay Compensation of a amount equal to the amount stated in**

disputed cheque (Exh. 18), within 30 days from this order, failure to do so, the accused had to undergo 30 days additional simple imprisonment.

2. Since the accused herein not remained present before this court without lawful excuse, for the said reason, it is hereby directed to issue non-bailable warrant u/s 418(2) of Cr.P.C. against the accused in order to secure his presence before this court and to send him to undergo the sentence imposed upon him. The said warrant shall be forwarded to P.I. Pranagar Police Station Dist. Rajkot for execution.
3. On production of accused before this court, the registry is directed to provide a copy of the present judgement free of cost to the accused immediately in view of Sec. 363(1) of The Criminal Procedure Code, 1973.

Pronounced and signed in the open court on dt. 31st July. 2025.

Rajkot

31/07/2025

A.S. Khandelwal

7th JMFC

Rajkot