Date of Institution : 02/02/2021
Date of Registration : 02/02/2021
Date of Decision : 07/08/2026
Duration: 05 Yrs 06 Months 05 Days

सत्यमेव जयते

GJAH220136062021

EXH.30

FORM A

THE COURT OF ADDL.CHIEF JUDICIAL MAGISTRATE, COURT NO. 36, AHMEDABAD CITY, AT AHMEDABAD

==

Ms. KUSUM DALPATBHAI PARMAR
8th ADDL.CHIEF JUDICIAL MAGISTRATE

==

DATE OF JUDGEMENT	**07/08/2026**
CRIMINAL CASE NO.	**12778/2021**

(Details of FIR/Offence and Police Station)

Police Station	Saijpur-Bogha, Ahmedabad
Offence as per Complaint	Section 138 of the Negotiable Instruments Act, 1881
Plea as per Complaint	Section 138 of the Negotiable Instruments Act, 1881
Complainant (Original Complainant)	Proprietor of J**ay Mataji Finance**, **Pravinkumar Gautambhai Diwan** having registered office at: C/304, Kantam Flats, Near G.D. High School, Saijpur-Bogha, Ahmedabad – 382345

As per the Proforma stipulated in Notification. C-2001-93 dated 20/05/2022 issued in direction of Honourable Supreme Court of India in Suo Moto WRIT (CRL) NO.(S) 1/2017 & Rule 179 A of Chapter VI of Criminal Manual.

Complainant Represented By	Learned Advocate Mr.A.M.Sheikh
Accused	**Pujaben Vijaybhai Sathwara**, Residing at: Alkapuri Society, Mansa,Taluka: Mansa, District: Gandhinagar – 382845.
Accused Represented By	Learned Advocate Mr.M.K.Jani

FORM B

Date of Offence/Complaint	20.01.2022
Date of FIR/Complaint	02.02.2021
Date of Chargesheet/Complaint	02.02.2021
Date of Framing of Charged/Plea	06.02.2023
Date of Commencement of Evidence	09.01.2024
Date on which judgement is reserved	20.07.2026
Date of Judgement	07.08.2026
Date of Sentencing Order	....

-: Details of Accused :-

No. of accused	Name of Accused	Date of Arrest	Date of released on Bail	Charge / Offence	Acquitted or Convicted	What Sent-ence	Period of detention undergone by the accused to be set off against the Sentence of Imprisonment
01	Pujaben Vijaybhai Sathwara	…...	…...	Sec. 138 of the N.I. Act 1881	AQUITTAL	As per final order	………….

<u>FORM C</u>

<u>(List of Prosecution/Defence/Court Witnesses)</u>

(A)For Prosecution Side

PW NO.	Name of Witness	Nature of Evidence	Exh. No.
1.	Pujaben Vijaybhai Sathwara,	Complainant	09

(B)Defence of Witness, if any

Rank	Name of Witnesses	Nature of Evidence	Exh. No.
–	**NIL**	—	–

(C) Court Witness, if any

Rank	Name of Witnesses	Nature of Evidence	Exh. No.
–	**NIL**	—	–

(List of Prosecution Exhibits)

Sr. No.	Description of Documentary Evidence	Exh. No.
1.	Disputed Cheque No. 516900 (22-12-2020)	07
2.	Bank Return Memo (24-12-2020)	08
3.	Statutory Demand Notice dtd.30.12.2020	09
4.	RPAD Postal Receipt dtd.02.01.2021 showing notice sent to Accused	10
5.	Postal Net Tracking / Delivery Report for notice Served on Accused on dtd. 30.08.2022	11
6.	Original Promissory Note dtd.20-10-2019	12
7.	Money Lending License Reg. GML/01/C/AHD/1221/19 (Ahmedabad)	18
8.	Income Tax Returns AY 2019–2020	19
9.	Balance Sheet for AY 2020–2021	20
10.	Income Tax Returns AY 2021-2022	21
11.	Income Tax Returns AY 2022-2023	22
12.	Income Tax Returns AY 2023-2024	23
13.	Khatavahi (Form 9 Ledger Account) (01-04-2019 to 31-12-2021)	24
14.	Money Lending License Reg. GML/01/C/GANDHI.KALOL/1221/19 (Kalol, Gandhinagar)	25

(List of Defence Exhibits)

Rank	Name of Document	Exh.No
	–	—

(Material Objects)

Rank No.	Description of Articles	Exh. No
	–	—

-: JUDGMENT :-

I. BRIEF STATEMENT OF FACTS :

1. The present complaint has been instituted by Pravinkumar Gautambhai Divan, proprietor of M/s Jay Mataji Finance (hereinafter referred to as "the Complainant"), under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the N.I. Act") against Pujaben Vijaybhai Sathwara (hereinafter referred to as "the Accused").

Complainant's Case:

2. The Complainant is engaged in the money lending business under a valid Registration Certificate issued under the Gujarat Money Lenders Act, 2011. On **20-10-2019**, the Accused approached the Complainant and borrowed a cash loan of **Rs.1,50,000/-** at an agreed interest rate of 1.5% per month , executing an original Promissory Note on the same day. According to the Complainant, over 14 months, the cumulative principal and accrued interest reached Rs.1,81,500/-. After deducting a cash repayment of Rs.10,000/-, the remaining outstanding sum was **Rs.1,71,500/-**.

3. To discharge this debt, the Accused handed over Cheque No. 516900 dated **22-12-2020** for **Rs.1,71,500/-** drawn on Dena Bank, Mansa Branch, Gandhinagar. The Complainant presented the cheque through State Bank of India, Meghaningar Branch, but it was returned dishonored on **24-12-2020** with the bank endorsement **"Funds Insufficient"** .

4. The Complainant sent a Statutory Demand Notice on **30-12-2020** via RPAD on 02-01-2021, which was served upon the Accused on **04-01-2021**. Despite receipt of this notice, the Accused failed to reply the same and to pay the demanded sum within 15 days, hence the present complaint filed.

Procedural History:

Summons were issued against the Accused after compliance with Section 200 of the Cr.P.C. Upon appearance, the particulars of the offense were read over and explained to the Accused and the plea/statement of the Accused under Section 251 Cr.P.C. was recorded on **06-02-2023**, vide **Exh.6** wherein the Accused pleaded **not guilty** and claimed trial. The Complainant led evidence as CW-1 and produced documentary evidences while the Accused, through his Ld.Advocate Mr.M.K.Jani, cross-examined the Complainant in detail.

5. **<u>Futher Statement</u>** :- Though enough opportunities have been given to the accused, he is not remained present in the court, hence his right of futher statement has been closed.

<u>Arguments</u> :-

6. **From Complainant's Side** :-Ld. Advocate for the Complainant Mr.A.M.Sheikh argued that the complainant has proved his case; accused and his Ld.Advocate are not remaining present since long. They are absent from the stage of more cross-examination of complainant for the additional documents produced from the complainant's side. Thereafter they are not present for further statement and final arguments also. From complainant's side all relevant evidences have been produced for the defence taken in the cross-examination of complainant. So on considering all these evidences and facts, as the case is proved against the accused, he be held convicted and punished for the offence as per the law under sec.138 of the Negotiable Instruments Act and double the amount of cheque be ordered as compensation to the complainant.

7. **From the Accused's Side :** As nobody appeared from the accused side though enough opportunities have been given, the right to argue in the matter has been closed.

8. II. <u>POINTS FOR DETERMINATION</u> : The primary points to adjudicate the criminal liability of the Accused, that fall for determination before this Court are as under :-:

1. Whether the Complainant proves that Cheque No. 516900 dated 22-12-2020 for Rs.1,71,500/- was drawn and issued by the Accused in discharge, of a legally enforceable debt or liability ?

2. Whether the Accused has successfully rebutted the statutory presumptions under Sections 118(a) and 139 of the N.I. Act on a standard of preponderance of probabilities through cross-examination admissions and gaps in record ?

3. What is the final order/Judgment ?

9. III.<u> LIST OF EVIDENCES FROM COMPLAINANTS SIDE : </u>From the complainant's side following documentory evidences vide list of documents **Exh.4** have been produced through his affidavit in chief vide **Exh.3** under section 145 of Negotiable Instruments Act,1881.

Sr. No.	**Description of Documentary Evidence**	**Exh. No.**
1.	Disputed Cheque No. 516900 (22-12-2020)	07
2.	Bank Return Memo (24-12-2020)	08
3.	Statutory Demand Notice dtd.30.12.2020	09

4.	RPAD Postal Receipt dtd.02.01.2021 showing notice sent to Accused	10
5.	Postal Net Tracking / Delivery Report for notice Served on Accused on dtd. 30.08.2022	11
6.	Original Promissory Note dtd.20-10-2019	12
7.	Money Lending License Reg. GML/01/C/AHD/1221/19 (Ahmedabad)	18
8.	Income Tax Returns AY 2019–2020	19
9.	Balance Sheet for AY 2020–2021	20
10.	Income Tax Returns AY 2021-2022	21
11.	Income Tax Returns AY 2022-2023	22
12.	Income Tax Returns AY 2023-2024	23
13.	Khatavahi (Form 9 Ledger Account) (01-04-2019 to 31-12-2021)	24
14.	Money Lending License Reg. GML/01/C/GANDHI.KALOL/1221/19 (Kalol, Gandhinagar)	25

10. EVALUATION OF EVIDENCES PRODUCED ON RECORD FROM THE COMPLAINANT'S SIDE :-

1. Evidence of Money Lending License (Reg. No. GML/01/C/AHD/1221/2019) Exh.18 and Exh.25 Reg. No.GML/01/C/GANDHI.KALOL/75/2019) :- These Certificates issued under the Gujarat Money Lenders Act, 2011, valid from 14/05/2019 to 31/03/2024 for the jurisdiction of Ahmedabad and from 10/06/2019 to

31/03/2024 for the jurisdiction of Kalol at Gandhinagar. While these documents validates the Complainant's general credentials as a money lender, cross-examination established that the transaction took place at **Mansa** in District Gandhinagar. Operating commercially outside the territorial scope specified in the money lending registration violates state regulations, casting serious doubt on the legal enforceability of money lent beyond authorized territorial limits.

2. Original Promissory Note dated 20-10-2019 Exh.13 : Executed for Rs.1,50,000/- @ 1.5% interest per month. The Promissory Note only establishes a cash principal advance of Rs.1,50,000/-. It does not, by itself, substantiate the higher cheque figure of Rs.1,71,500/-. In the absence of a ledger account signed by the debtor, the gap of Rs.21,500/- remains unverified by this document.

3. Original Cheque No. 516900 & Bank Return Memo Exh.8 and Exh.9 : Cheque dated 22-12-2020 for Rs.1,71,500/- dishonored on 24-12-2020 due to "Funds Insufficient". These documents satisfy the foundational ingredients under Section 138 of the N.I. Act, raising initial statutory presumptions under Sections 118 and 139 in favour of the Complainant. However, these presumptions are rebuttable.

4. Statutory Demand Notice & Postal Delivery Proof

Exh.10 : Notice dated 30-12-2020, sent on 02-01-2021, served on 04-01-2021. The Complainant complied with the procedural timelines under Section 138 proviso (b). However, procedural compliance cannot substitute for substantive proof of a legally enforceable debt when the underlying calculation is challenged.

5. Evidence of Income Tax Return Exh.Nos. 19 to 21 (AY 2019–20 to AY 2021–22) : ITR Verification Forms, Computation Statements, P&L Accounts, and Balance Sheets. While submitted to demonstrate financial capacity, the records confirm that Rs.1,50,000/- was advanced completely in cash. Under Section 269SS of the Income Tax Act, 1961, transactions exceeding Rs.20,000/- must be executed via banking channels. Furthermore, no individualized statement of account between the parties was submitted from these books to corroborate how the net sum of Rs.1,71,500/- was computed.

11. IV. <u>DETAILED CONSIDERATION OF DEFENSES RAISED IN CROSS-EXAMINATION</u> : During the cross-examination of the Complainant (CW-1) on 06-02-2024, the defense counsel extracted material admissions that undermine the Complainant's case :

Defence 1: Absence of Core Transactional Particulars in Pleadings - Admission by CW-1**:**

"It is true that the period for which the alleged amount was

> ***given to the accused is not stated in my complaint, notice, or chief-examination."***
>
> ***"It is true that the monthly installment amount by which the accused was to repay is not mentioned in notice, chief-examination, or complaint."***
>
> ***"It is true that I have not stated in my complaint, notice, or chief-examination in which specific months from 20/10/2019 to 22/12/2020 the accused failed to pay interest."***
>
> ***"It is true that the documentary proof regarding the exact period for which money was given is not produced before the court."***

From the above admissions by Complainant in his cross-examination by the Ld.Advocate for the defence, it seems that essential facts regarding loan duration, repayment schedule, and specific months of interest default are missing from the statutory notice and complaint. In commercial financial transactions, a blanket claim without basic temporal details fails to inspire confidence.

12. **Defence 2:** Lack of Accounting / Settlement Evidence for the Cheque Amount -- Admission by CW-1:

> ***"It is true that no document is produced on record to show that me and the accused had a calculation/settlement of accounts regarding hand loan, based on which the cheque was given."***
>
> ***"It is true that the exact date, month, and year on which the disputed cheque was handed over by the accused is not mentioned in my complaint, notice, or chief-examination."***

The principal amount was Rs.1,50,000/- and the cheque was for Rs.1,71,500/-. To claim protection under Section 138, the Complainant must prove that the exact sum written on the cheque represented an existing, legally enforceable debt on the date of issuance. The admission that no calculation statement or account settlement document exists — and that the date of cheque delivery was never disclosed — raises a probable defense that the cheque was taken as an undated security instrument rather than for a settled, crystallized liability.

13. **Defence 3:** Territorial Jurisdiction & Unauthorized Money Lending -- Admission by CW-1**:**

> ***"The transaction procedure regarding this transaction with the accused took place at Mansa." (***આરોપી સાથે આ વ્યવહારની કાર્યવાહી માણસા મુકામે થયેલી.***)***
>
> ***"It is true that Jay Mataji Finance has an office in Gandhinagar and the accused resides in Gandhinagar, and the bank branch of the disputed cheque is in Gandhinagar."***
>
> ***"Jay Mataji Finance does not have any bank account at Gandhinagar."***

The Complainant's license restricts his money lending operations to Ahmedabad. The admission that the transaction, residence of the borrower, and bank branch are all situated in Mansa (Gandhinagar) demonstrates that the Complainant operated outside his licensed territorial jurisdiction. Transactions conducted in violation of mandatory licensing provisions under state money lending statutes cannot be classified as "legally enforceable debts" under Section 138.

14. **Defence 4:** Violation of Section 269SS IT Act -- Admission by PW-1:

> ***"It is true that I am aware of general Income Tax rules that an amount exceeding Rs.20,000/- should be given by cheque."***

The Complainant knowingly disbursed a large cash loan of Rs.1,50,000/- in breach of Section 269SS.

While technical IT Act violations alone might not render a cheque void, when combined with missing accounts and jurisdictional issues, this violation supports the inference that the transaction lacks legitimate transparency.

15. **V. <u>REASONING & ANALYSIS OF DEFENCES WITH APPLICABLE LEGAL PRINCIPLES</u> :-**

Standard of Proof for Rebuttal: As established in ***Rangappa v. Sri Mohan (2010) 11 SCC 441*** and ***Basalingappa v. Mudibasappa (2019) 5 SCC 418***, the accused in a Section 138 proceeding does not need to prove their defense beyond a reasonable doubt. The presumption under Section 139 N.I. Act can be rebutted on a **preponderance of probabilities**, which can be established through cross-examination of the complainant.

16. **Rebuttal of Presumptions under Sections 118 and 139 N.I. Act :-** Under Sections 118(a) and 139 of the N.I. Act, the Court must presume that the cheque was issued for consideration and in discharge of a debt. However, as laid down by the Hon'ble Supreme Court in **Rangappa v. Sri**

Mohan (2010) and **Basalingappa v. Mudibasappa (2019)** , the standard of proof required to rebut this presumption on the part of the accused is that of **preponderance of probabilities**. The accused can rely on the material submitted by the complainant, including cross-examination admissions, to raise a probable defense.

17. For the above legal principles taking into consideration the facts alongwith the defence raised from the accused side, the principal sum on the Promissory Note is Rs.1,50,000/-, the cheque is drawn for **Rs.1,71,500/-**. The Complainant has explicitly admitted in cross-examination that :

> ***No written statement of account or calculation sheet showing how Rs.1,71,500/- was derived was placed before the Court.***
>
> ***No default dates or interest calculation breakdowns were pleaded in the complaint, demand notice, or examination-in-chief.***

Where a cheque includes accrued interest and adjustment of partial payments, the exact computation forming the "legally enforceable debt" must be pleaded and substantiated. The failure to produce any accounting entry or calculation creates significant doubt regarding the actual existing debt on the date of the cheque.

18. Pre-requisite of Existing Legally Enforceable Debt : In ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel (2022) 6 SCC 745***, the Hon'ble Supreme Court held that where a cheque amount exceeds the actual legally enforceable liability on the date of presentation without proper accounting/endorsement, Section 138 is not attracted.

19. **Territorial Jurisdiction and Money Lending Operations :-** The Complainant submitted two distinct licensing proofs — one **Exh.18** pertaining to Ahmedabad and **Exh. 25** specifying Kalol, Gandhinagar. However, in his oral cross-examination, Complainant/ CW-1 explicitly testified:

"The transaction procedure regarding this transaction with the accused took place at Mansa."

"It is true that Jay Mataji Finance has an office in Gandhinagar and the accused resides in Gandhinagar... Jay Mataji Finance does not have any bank account at Gandhinagar."

Under the Gujarat Money Lenders Act, 2011, a money lender is strictly bound to carry on transactions within the territorial limits and declared business premises specified in the registration certificate. If **Exh. 25** authorizes business at **Kalol**, but the transaction was admittedly executed at **Mansa** without an official bank account or registered office in Mansa, the loan was extended in direct violation of statutory licensing mandates.

20. Money advanced through unauthorized lending activities outside the designated license parameters under state regulations cannot be categorized as a "legally enforceable debt" for prosecution under Section 138 of the N.I. Act.

21. The disputed cheque No. 516900 was deposited for collection by the Complainant through his bank account at State Bank of India, Meghaningar Branch, Ahmedabad. Under Section 142(2)(a) of the N.I. Act, when an account payee cheque is presented for collection through an account, the court within whose local jurisdiction the Payee maintains their bank account (home branch) possesses valid territorial jurisdiction to try the offense under Section 138.

22. Because the Complainant maintains his bank account in Meghaningar, Ahmedabad, the Special N.I. Act Court in Ahmedabad held valid territorial jurisdiction to entertain and adjudicate the complaint. The fact that the Accused resides in Mansa or that her drawee bank branch is Dena Bank, Mansa, does not divest the Ahmedabad court of its statutory jurisdiction under Section 138.

23. While the Ahmedabad court had procedural authority to hear the case, the substantive analysis of jurisdiction regarding the underlying money lending transaction went heavily against the Complainant**.** The Complainant produced two Money Lending Licenses - one **Exh.18** for Ahmedabad and another **Exh. 25**, for Kalol, District Gandhinagar as the registered place of business. During cross-examination, Complainant (CW-1) Pravinkumar Divan specifically admitted under oath that :

"The transaction procedure regarding this transaction with the accused took place at Mansa."

24. Under the Gujarat Money Lenders Act, a money lender is legally restricted to advance financial loans within the territorial parameters and declared business premises specified in their license. Extending loans in Mansa when the license authorizes operations in Ahmedabad or Kalol constitutes an unauthorized money lending activity.

25. While an administrative or licensing flaw does not automatically destroy a court's ability to hear a cheque bounce case, money advanced through unauthorized lending outside the licensed territory cannot be recognized as a "legally enforceable debt or liability" for prosecution under Section 138 of the N.I. Act.

26. Further, the Promissory Note was executed in connection with money lending operations conducted in Mansa District Gandhinagar. Because the Complainant’s Money Lending License was issued for Ahmedabad and Kalol, extending loans under a Promissory Note in Mansa without territorial authorization violates state money lending laws, making the enforcement of such debts legally problematic.

27. The Complainant operates as a licensed money lender under the Gujarat Money Lenders Act, 2011. His license Exh.18 and Exh.25. explicitly restricts his territorial operation to Ahmedabad and Kalol. However, during cross-examination, CW-1 made a categorical admission:

"The transaction procedure regarding this transaction with the accused took place at Mansa."

Mansa falls within District Gandhinagar, outside the authorized territorial scope of the Complainant's license. Carrying out commercial money lending activities outside the licensed jurisdiction, coupled with the lack of an official bank account or office in Gandhinagar, creates a statutory bar under money lending regulations, rendering the recovery of such loan legally questionable.

28. **<u>Evidence of Exh. 24-- Khatavahi of Form 9 Ledger Account from 01-04-2019 to 31-12-2021</u> :-**

Exh. 24 is the Form 9 Khatavahi extract maintained by M/s Jay Mataji Finance containing the ledger account of the Accused, Pujaben Sathwara, covering the period from 1st April 2019 to 31st December 2021. Under Section 34 of the Indian Evidence Act, 1872, entries in books of account regularly kept in the course of business are relevant, but such statements shall not alone be sufficient evidence to charge any person with liability. While **Exh. 24** reflects entries spanning the loan period, it represents a unilateral accounting document maintained internally by the money lender.The record contains no written acknowledgment, counter-signature, or periodic confirmation of balance signed by Pujaben Sathwara on Form 9.

29. Crucially, during cross-examination, Complainant /CW-1 admitted that ***"no document is produced on record to show that me and the accused had a calculation/settlement of accounts regarding hand loan, based on which the cheque was given."***

30. **Exh. 24** shows raw debit/credit entries, but in the absence of a signed settlement agreement, it fails to prove that the Accused consented to or owed the exact figure of Rs.1,71,500/- on 22-12-2020 as a legally enforceable debt.

31. **<u>Violation of Section 269SS of the Income Tax Act & Cash Disbursal</u> :-** The Complainant admitted disbursing Rs.1,50,000/- entirely in cash and acknowledged awareness of Section 269SS of the Income Tax Act. While technical non-compliance with Income Tax laws alone may not invariably invalidate a transaction under Section 138, when combined with : The absence of any contemporaneous cash receipt/loan agreement, The omission of loan terms in pleadings, and Non-explanation of exact cheque issuance dates, it severely damages the credibility of the transaction and supports the defense that the cheque was not given in discharge of a clean, proven liability.

VI. <u>FINDINGS & REASONED CONCLUSION</u> :-

32. **On Point No. 1 :** *In the Negative.* The Complainant has failed to establish that the cheque amount of Rs.1,71,500/- represented a crystallized, legally enforceable debt on the date of issuance, given the absence of settlement records, unexplained interest calculations, and territorial licensing deficiencies.

33. On Point No. 2 : *In the Affirmative.* The Accused has successfully rebutted the statutory presumption under Section 139 N.I. Act on a preponderance of probabilities through admissions obtained in cross-examination.

34. On Point No. 3 : For all the reasons recorded above following final order/Judgment is passed in the interest of justice.

-: FINAL ORDER :-

1. The Accused, **Pujaben Vijaybhai Sathwara**, is hereby **ACQUITTED** of the offense punishable under **Section 138 of the Negotiable Instruments Act, 1881** in Criminal Case No. 12778 of 2021.

2. The bail bond and surety bond of the Accused stand discharged.

File be consigned to record room after due compliance.

Pronounced in the open Court today i.e. on this 7th Day of August, 2026.

(Ms. KUSUM DALPATBHAI PARMAR)
8th Addl.Chief Judicial Magistrate
Court No. 36,Ahmedabad City.
(Judge Code - GJ01016)