



Received on : 10.10.2022

Registered on : 10.10.2022

Decided on : 01.10.2025

Duration : 22. 11. 02

DD MM YY

**IN THE COURT OF HONORABLE CHIEF JUDICIAL
MAGISTRATE, MODASA, DIST. ARVALLI**

Criminal Case No.1873 of 2022

Ex.

Complainant:

The Modasa Dhansura Taluka Group Gopalak Seva,
Sahkari Seva Mandal, Limited,
at Post: Vadvaas, Post: Gadha,
Tal: Modasa, District: Arvalli,
Age: 51, Hindu, Residing at: Post: Vaniyaad,
Taluka: Modasa, District: Arvalli.

VERSUS

Accused:

Rabari Malabhai Joddhabhai,
Age: Adult, Hindu, Occupation: Agricultural,
at Post: Rampur, (Vadgam),
Post: Rampur (Vadagam), Taluka: Dhansura,
District: Arvalli.

COMPLAINT UNDER SECTION 138 NEGOTIABLE INSTRUMENTS

ACT, 1881.

Appearance :

Ld. Advocate Mr. D.V. Rajan, for the Complainant.
Ld. Advocate Mr. R.G. Bharvad, for the Accused.

::J U D G M E N T::

- 1 The present complaint has been filed by the complainant against the accused under the provisions of Section 138 Negotiable Instruments Act, 1881(hereinafter referred to as "NI Act")
2. The fact of the present case is that, the complainant and the accused are known

to each other and are having friendly relations, the accused asked the complainant to lend a sum of Rs. 49,220/- for. In response, the complainant agreed to give an amount of Rs. 49,220/- to the accused person.

2.1. After completion of the time period the complainant asked for the repayment of the aforesaid amount thereafter the accused gave a cheque bearing Cheque No. 001010 dated 12.08.2022 for the amount of Rs. 49,220/- of the Sabarkantha District Central Government Bank Limited. That on 17.08.2022 the complainant deposited the said cheque to the Sabarkantha District Central Co. Operative Bank Limited at Modasa Branch for clearance and the cheque dishonored indicating the insufficiency of funds in the accused's account to honour the instrument. In consequence of the dishonour of the aforementioned cheque, the complainant, through his learned Advocate, issued a statutory legal notice dated 05.09.2022 to the accused under Section 138 of the Negotiable Instruments Act, 1881. The notice was dispatched to the accused's last known address, calling upon the accused to make payment of the cheque amount. The said notice was duly served upon the accused on 07.09.2022. Despite receipt of the legal notice and being duly informed of the dishonour of the cheque, the accused failed to remit the outstanding amount within the statutory period of fifteen (15) days from the date of service of notice. Consequently, the present complaint is being instituted under the provisions of Section 138 of the Negotiable Instruments Act, 1881.

3 After filing the complaint of the present case, taking cognizance of the present complaint, on the basis of the complaint, verification and documentary evidence, a summons was issued by this court against the accused under provisions of the Civil Procedure Code, 1908 for the offense punishable under Section-138 of the Negotiable Instrument Act, 1881. Thereafter, under the provision of Section 207 Code of Criminal Procedure, the accused was given copies of all the papers. Statement (Plea) of the accused was recorded at Exh.13 whereby the accused had pleaded not guilty for the offence of Section

138 N.I Act, 1881. Hence, the case was adjourned for further judicial proceedings. Thereafter, the accused was not present even though the accused is aware that the case is in this court therefore, the right of the accused to cross-examine the complainant and the right of the accused to make a further statement and the arguments of the accused have been closed and matter was kept for judgment in his absence.

4. The parties to the suit have, in support of their case, produced oral as well as documentary evidences which are enlisted just as below.

Oral Evidence of complainant

Sr.	Particulars	Exhibit
1	Affidavit in chief examination of Complainant.	4

Documentary Evidence of Complainant

Sr.	Particulars	Exhibit
1	Original Cheque No. 001010 issued by the accused to the complainant.	—
2	Cheque Return Memo issued by the bank of the complainant with reason of 'fund insufficient'.	—
3	Notice issued by the complainant to the accused through Ld.advocate.	—
4	RPAD Slip	21
5	Track Consignment	22

5. For the just decision of the case following issues have arises.

- 1 Whether the complainant proves that the accused had issued a cheque no. 001010, drawn on the Sabarkantha District Central Co. Op. Bank Limited, of Modasa Branch of bank account No. 615036197229 for an amount of Rs. 49,220/- towards discharge of legally enforceable debt or liability and the cheque was dishonored for reason stated in the return memo and even after valid service of statutory legal notice, the accused has not paid the debt covered under the aforesaid cheque and thereby, the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act ?

2 What order ?

6. My findings of the aforesaid issues are as under. :

1. In affirmative
2. As per final order.

REASONS

7. The Ld.advocate for the complainant has submitted that, while returning the cheque given by the accused, the complainant through his Ld.advocate issued a notice to the accused by registered post, which despite the notice, the accused did not give money back, therefore filed the complaint. In spite of repeated issue of process to the accused by the court and in spite of being aware of the process, the accused has deliberately not been present and the accused has not appeared and taken any action to rebut the evidence of the prosecution. Even then the court adjourned the proceedings but the accused has not been remained present. So all the facts prove that the accused has committed the offence of Section-138 of NI Act, 1881 and request to punish him.
8. The complainant has filed the present complaint alleging that the accused has committed an offence punishable under section 138 of Negotiable Instruments Act. Therefore, initially the burden of proof lies upon the complainant under section 101 to 103 of Indian Evidence act to prove his case. Before proceeding to the merits of the case, it is important to lay down the basic provision of law with respect to section 138 of the Negotiable Instruments Act, 1881 which is as follows:

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 8 [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 three months from the date on which it is drawn or within the period of its validity, whichever is earlier; (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. *Explanation.*—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

6. As far as the ingredients constituting the offence is concerned, the accused has admitted to the issuance of the cheques for security by him in favor of the complainant. Further there is no issue regarding limitation period of notice and complaint is filed within the period of limitation. With these admissions i.e. the cheques in question belong to the accused and the signatures on the cheques are also of accused, a presumption of the cheques having been issued in discharge of a legally sustainable liability and drawn for good consideration, arises by virtue of Section 118 (a) and Section 139 of the Negotiable Instruments Act which is reproduced as follows:

118. *Presumptions as to negotiable instruments.*— Until the contrary is proved, the following presumptions shall be made:— (a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration; (b) as to date:—that every negotiable instrument bearing a date was made or drawn on such date; (c) as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; (d) as to time of transfer:—that every transfer of a negotiable instrument was made before its maturity; (e) as to order of indorsements:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; (f) as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped; (g) that holder is a holder in due course:— that the holder of a negotiable instrument is a holder in due course : provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an 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.

139. *Presumption in favour of holder.*— It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability. 7. Once Section 139 of NI Act comes into picture, the court presumes that the cheque was issued in discharge, in whole or in part, of any debt or other liability. When the presumption is raised in favor of the complainant, the burden shifts upon the accused to disprove the case of the complainant by

rebutting the presumption raised in favor of the complainant. Being the rule of reverse onus, it is the duty of the accused to prove that he does not owe any liability towards the complainant.

9. Once Section 139 of NI Act comes into picture, the court presumes that the cheque was issued in discharge, in whole or in part, of any debt or other liability. When the presumption is raised in favor of the complainant, the burden shifts upon the accused to disprove the case of the complainant by rebutting the presumption raised in favor of the complainant. Being the rule of reverse onus, it is the duty of the accused to prove that he does not owe any liability towards the complainant.
10. Herein the present on hand the complainant has produced original cheque vide Ex.09 issued in favor of the complainant which fact has been declared by the complainant on affidavit. The said Cheque Ex.___is of the Sabarkantha District Co. Operative Bank Ltd. The signature in the cheque is in Gujarati language , the amount of Rs. 49,220/-is written in the cheque and in words. The name of complainant is written in the pay to the Cheque. Cheque return Memo is produced vide Ex. ___ in which the reason for return of the cheque is mentioned as “ fund insufficient”. Vide Ex.___, the complainant has produced of the notice given to the accused in which all the details of the said cheque has been mentioned. As per the discussion above, the accused remained absent and the accused has not challenged the evidence of the complainant and has not cross-examined the complainant. The rights of cross-examination was closed and accordingly has not rebutted any presumption under Section-139 and Section-118 of the Negotiable Instruments Act, the complainant has succeeded in proving the facts of his complaint. Hence I answered issued No.1 in affirmative and Pass the following order in the absence of the accused.

:-ORDER:-

- (1) Rabari Malabhai Joddhabhai, Age: Adult, Hindu, Occupation: Agricultural, at Post: Rampur, (Vadgam), Post: Rampur (Vadagam), Taluka: Dhansura, District: Arvalli, is ordered to be sentenced six months simple imprisonment for the

offense of Section-138 of Negotiable Instruments Act.

- (2) In accordance with Section 357(3) of Code of Criminal Procedure, the accused is ordered to pay compensation of Rs. 49,220/- to the complainant, within a period of 30 days from the date of judgment. In case of default to pay such compensation, the accused is ordered to undergo further simple imprisonment of one month.
- (3) It is ordered to issue a warrant against the accused.
- (4) The convict is ordered to be provided a copy of this judgment free of cost in accordance with S.363(1) of Code of Criminal Procedure.

Signed and pronounced in the open court today.

Date:01/10/2025

Modasa

(Mr.P.D.Jethva)

Chief Judicial Magistrate

Arvalli at Modasa.

UNIQ I.D.No.GJ00901

Bhavya D. Trivedi