KABC030517342025

IN THE COURT OF THE XXVI ADDL. CHIEF JUDICIAL MAGISTRATE, AT: BENGALURU

Present : **Smt. NIRMALA .S.,**
B.A.L., LL.M.,

XXVI Addl., Chief Judicial Magistrate, Bengaluru.

DATED THIS THE 23rd DAY OF JULY 2026

JUDGMENT U/S 355 OF Cr.P.C.1973

1.	Serial number	:	C.C. No.**30046/2025**
2.	Name of the complainant	:	Pragathi Co-operative Bank Limited, No.121, 1st Main Road, Pragathi Bhavana, 9th Cross, Malleshwaram, Bengaluru-560 003. Rep. by its Branch Manager (By Sri. H.B. Advocate)
3.	Name of the accused	:	Santhosh S. Shetty S/o Sadhu Shetty Major in age R/at No.1221,

Giridhama Nivasa,
1st Floor, Ashoka Nagar,
Opp.to Hanumanthanagar
Police Station,
Bengaluru-560 050.

(By Sri. A.S. Advocate)

4.	The offence complained of or proved	:	Section 138 of the N.I. Act
5.	Plea of the accused	:	Pleaded not guilty
6.	Final order	:	Accused is convicted
7.	Date of order	:	23-07-2026

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<u>JUDGMENT</u>

This complaint is filed by the complainant i.e., Pragathi Co-Operative Bank Ltd., against the accused for the offence punishable U/s.138 of Negotiable Instruments Act.

2. The brief facts of complainant case is that, Santhosh Shetty S/o Shekara Shetty the friend of the accused has taken a loan of Rs.10,00,000/- from the complainant bank for his business purpose on 07-06-2024 on interest @ 18% p.a., to be repaid with 12 months. That Santhosh shetty did not repay the said loan amount as per his promise. The accused has given his surety to his friend Santhosh Shetty. The accused being the surety has given his own cheque bearing No.000042 dated 25-02-2025 for a sum of Rs.3,30,000/- drawn on Bank of Baroda, No.1026, 11th Cross, 24th Main, Sector No.1 Branch, Bengaluru. Further it is stated that when the complainant has presented the said cheque for collection the said cheque was returned to the complainant on 26-02-2025, for want of funds. The complainant has sent legal notice on 14-03-2025 to the accused demanding to pay the amount in respect of the dishonoured cheque. The accused has received the notice on

15-03-2025. The accused was given 15 days time to pay the amount, the accused did not pay the amount. But the accused requested the complainant to re-present the cheque and promised that the cheque would be encashed. As per this request the complainant again re-presented the cheque on 12-05-2025, but the said cheque has been returned to the complainant on 13-05-2025 for want of funds. Further even though the complainant brought the same fact to the knowledge of the accused through the legal notice dated 23-05-2025 by RPAD and it has been served on the accused on 24-05-2025. Therefore the complainant aggrieved by the acts of the accused filed this complaint for dishonour of the cheque issued by the accused towards the discharge of legally recoverable debt. As such is the case failure on the part of the accused to repay the cheque amount the complainant has approached the court for the reliefs claimed in the complaint.

3. After filing this complaint, this court took cognizance of the offence and registered the criminal case against the accused and summons was issued to him. In response to summons, he appeared before the court through his counsel and he was enlarged on bail. Thereafter plea was recorded and accused pleaded not guilty.

4. The complainant has represented by its Branch Manager, the complainant by name B. Vijay Kumar and he has been examined as PW1 and he has produced 05 documents as per Ex-P1 to 05.

5. On perusal of entire case file and evidence available on record the following points would arise for my consideration are:-

1) Whether the complainant proves that, the accused in due discharge of legally recoverable debt or other liability had issued the alleged cheque bearing

No.000042 dated 25-02-2025 for Rs.3,30,000/- drawn on Bank of Baroda, No.1026, 11th Cross, 24th Main, Sector No.1 Branch, Bengaluru?

2) Whether the complainant proves that, on presentation of said cheque, same was returned unpaid as "Account blocked" and despite of giving legal notice, he failed to pay the cheque amount, thereby he committed an offence punishable under section 138 of NI Act ?

3) What order?

6. Heard on both sides and I have also perused the entire materials available on record.

7. My findings on the above points are as under:

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : As per the final order for the following:-

REASONS

POINTS NO.1 and 2 :

Both points 1 and 2 are taken up together for common discussion to avoid repetition of facts.

8. It is the case of the complainant that, one Santhosh Shetty S/o Shekara Shetty the friend of the accused has taken a loan of Rs.10,00,000/- from the complainant bank for his business purpose on 07-06-2024 on interest @ 18% p.a., to be repaid with 12 months. That Santhosh shetty did not repay the said loan amount as per his promise. The accused has given his surety to his friend Santhosh Shetty. The accused being the surety has given his own cheque bearing No.000042 dated 25-02-2025 for a sum of Rs.3,30,000/- drawn on Bank of Baroda, No.1026, 11th Cross, 24th Main, Sector No.1 Branch, Bengaluru. Further it is stated that when the complainant has presented the

said cheque for collection the said cheque was returned to the complainant on 26-02-2025, for want of funds. The complainant has sent legal notice on 14-03-2025 to the accused demanding to pay the amount in respect of the dishonoured cheque. The accused has received the notice on 15-03-2025. The accused was given 15 days time to pay the amount, the accused did not pay the amount. But the accused requested the complainant to re-present the cheque and promised that the cheque would be encashed. As per this request the complainant again re-presented the cheque on 12-05-2025, but the said cheque has been returned to the complainant on 13-05-2025 for the reason "Account blocked". Further even though the complainant brought the same fact to the knowledge of the accused through the legal notice dated 23-05-2025 by RPAD and it has been served on the accused on 24-05-2025. Further even though the notice has been issued to the accused, the accused not repaid the cheque amount. Therefore, the accused having committed the offence punishable U/s.138 of N.I. Act. Hence, the complainant has come before the court with this complaint.

9. To prove the contentions of the complainant the Branch Manager of the complainant by name B. Vijaya Kumar has been examined as PW1. PW-1 has filed his examination-in-chief by way of affidavit which is replica of complaint averments. Further PW-1 has produced alleged Ex-P2 cheque which was issued by the accused towards discharge of loan amount of Rs.3,30,000/-. On presentation of the said cheque same has been returned as per the Ex.P-3 return memo as "Account blocked". Further as per Ex-P4 the complainant issued legal notice on 23-05-2025 through RPAD to the accused, the same has been served on the accused on 24-05-2025, it can be seen from Ex.P-5.

10. Before going to the merits of this case first of all I would like to glance over the law pertaining to the instant case. Admittedly the present case filed under section 138 of Negotiable Instruments Act to bring home guilt against the accused, the complainant must prove the following ingredients of Section 138 of Negotiable Instruments Act.

i) That, there is a legally enforceable debt.

ii) That the cheque was drawn from account of bank for discharge in whole or in part of any debt or other liability which presuppose a legally enforceable debt;

iii) Cheque so issued had been returned due to Account blocked

11. In a proceeding under section 138 of NI Act, the first and foremost ingredient is that, the alleged cheque must be drawn on account maintained by the accused and signature on alleged cheque belongs to him. Admittedly the alleged cheque is belongs to the accused. The accused has not at

all disputed about the signature as well as the cheque in the cross-examination.

12. On perusal of Ex-P2 cheque and bankers memo Ex-P3 it is clear that, on presentation of said cheque it was returned as "Account blocked". The complainant has issued legal notice through RPAD as required under section 138 (b) & (c) of NI Act to the address of the accused and the same has been served on the accused. Since the accused has not disputed the cheque and the signature, the presumption U/s.139 of NI Act has to be drawn as held by the Hon'ble Supreme Court in Rangappa vs. Mohan reported in AIR 2010(11) SCC 441.

13. It is true that, once the cheque relates to the accused and his signature on the said cheque is proved an initial presumption as contemplated U/s.139 of Negotiable Instruments Act has to be raised by the court in favour of

the complainant. Sec.139 of the Negotiable Instrument Act contemplates that it shall be presumed unless contrary is proved that the holder of the cheque received the cheque of the nature referred to in the Sec.138 for the discharge of the whole or in part any debt or liability. The presumption referred to U/s.138 of Negotiable Instruments Act is mandatory presumption and in general presumption.

14. In view of that the complainant Pragathi Co-Operative Bank Ltd., is represented through its Branch Manager by name B. Vijaya Kumar. In order to prove the same the complainant has produced the Board Resolution authorising the P.W.1 to prosecute the case. The Ex.P-1 Board Resolution which is clearly established that the present complainant is having an authority to represent the instant case on behalf of the complainant bank. Further to avail the presumption the complainant has been examined himself as PW-1 and marked exhibits

Ex.P-1 to 05 i.e., Ex.P-1 is the Board Resolution, Ex.P-2 is the cheque, Ex.P-3 is the endorsement, Ex.P-4 is the legal notice, Ex.P-5 is the postal acknowledgment. Out of these documents to prove the presumption in favour of the complainant on perusal of the Ex.P-1 Board Resolution for the PW-1 to prosecute the case. Ex.P-2 is the cheque bearing No.000042 dated 25-02-2025. Ex.P-3 is the endorsement dated 26-02-2025 as the same is issued as a return memo for 'Account blocked'. Further as per the Ex.P-4 is the legal notice by which the complainant has issued the legal notice to the accused dated 23-05-2025 and the same has been served on the accused on 24-05-2025. According to complainant this accused having taken loan, when the complainant approached for repayment, accused has issued the Ex.P-2 cheque and when the same was presented for the encashment the same has been dishonoured by the bank as per Ex.P-3 for the reason ‘account blocked’. Further even though the complainant has issued notice to the accused intimating dishonour of the cheque as per Ex.P-4, it was returned served as per Ex.P-5 and also accused has not repaid the loan amount.

15. On the other hand it is the contention taken by the accused that the complainant has failed to produce any loan documents, guarantee agreement or surety bond to support the later version that the accused stood as a guarantor. In the absence of documentary evidence, the complainant’s contradictory oral testimony becomes wholly unreliable and unworthy of acceptance.

16. Further it is to be seen that it is the main defence of the accused in the written arguments that complainant has failed to establish the very foundation of its case and not produced any documents to prove his case and allegations that the accused stood as a surety/guarantor for the loan availed by the principal borrower. However, no guarantee agreement, deed of guarantee, loan application, sanction letter, or any other document evidencing the accused's status as a surety has not been produced before this court.

17. Further it is argued that the burden to prove the foundational facts always lies upon the complainant. Unless it is first proved that the accused had a legally enforceable liability, the statutory presumptions under sections 118 and 139 of the Negotiable Instructions Act cannot be invoked.

18. Further it is argued that in the judgment of Basalingappa v. Mudibasappa, (2019) 5 SCC 418, the Hon'ble Supreme Court held that the presumption under Section 139 is rebuttable and that the accused can rebut it on the standard of preponderance of probabilities. Where the complainant's own evidence fails to establish the existence of a legally enforceable liability, the accused is entitled to the benefit of doubt.

19. Further it is argued that similarly, in John K. Abraham v. Simon C. Abraham, (2014) 2 SCC 236, the Hon'ble Supreme Court held that the complainant must first prove the foundational facts regarding the transaction before seeking the benefit of the statutory presumption.

20. Further it is argued that, in Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54, the Hon'ble Supreme Court observed that the existence of a legally

recoverable debt is not to be presumed in every case merely because a cheque has been issued. Although the statutory presumption operates in favour of the complainant, the existence of legally enforceable liability must still be established through the evidence on record.

21. It is further argued that in the present case, except making a bald assertion that the accused was a surety, the complainant has not produced any documentary evidence whatsoever to substantiate such contention. No bank official has proved the execution of any guarantee document by the accused. Therefore, there is absolutely no evidence to establish that the accused owed any legally enforceable liability to the complainant.

22. It is further argued that in the absence of proof that the accused was a guarantor or otherwise legally liable, the complainant has failed to prove an essential ingredient of

the offence under Section 138 of the Negotiable Instruments Act. Hence, the complaint deserves to be dismissed and the accused is entitled to be acquitted.

23. Further it is argued that the complainant has taken mutually destructive and inconsistent stands regarding the very nature of the transaction. In his evidence, the complainant initially deposed that the accused himself had availed the loan. Subsequently, he changed his version and stated that the loan was in fact availed by another person and that the accused had merely stood as a surety for the said borrower.

24. Further it is argued that this is not a minor discrepancy but a material contradiction which goes to the root of the prosecution case. The identity of the principal borrower and the capacity in which the accused is alleged to be liable constitute the very foundation of the complaint

under Section 138 of the Negotiable Instruments Act. When the complainant himself is uncertain whether the accused is the principal borrower or merely a guarantor, the alleged legally enforceable debt or liability remains unproved.

25. It is further argued that the complainant has also failed to produce any loan documents, guarantee agreement, or surety bond to support the later version that the accused stood as a guarantor. In the absence of documentary evidence, the complainant's contradictory oral testimony becomes wholly unreliable and unworthy of acceptance.

26. It is further argued that it is a settled principle of criminal jurisprudence that where the prosecution or complainant presents inconsistent versions on material particulars, the benefit of such doubt must necessarily go to

the accused. The complainant having failed to establish a consistent and credible case regarding the accused's liability, one of the essential ingredients of Section 138 of the Negotiable Instruments Act remains unproved. Therefore, the accused is entitled to an order of acquittal.

27. Further it is argued that the complainant alleges that the accused stood as a surety/guarantor for the loan availed by the principal borrower. However, no guarantee agreement, deed of guarantee, loan application, sanction letter, or any other document evidencing the accused's status as a surety has been produced before this court.

28. Further it is argued that the burden to prove the foundational facts always lies upon the complainant. Unless it is first proved that the accused had a legally enforceable liability, the statutory presumptions under Sections 118

and 139 of the Negotiable Instruments Act cannot be invoked.

29. Further it is argued that accused is under no legal obligation to enter the witness box or adduce defence evidence in a prosecution under Section 138 of the Negotiable Instruments Act. The burden always lies upon the complainant to establish the foundational facts constituting the offence. The accused is entitled to rebut the statutory presumptions on the standard of preponderance of probabilities, and such rebuttal can be achieved through the material brought on record by the complainant himself, including admissions elicited during cross-examination. No adverse inference can be drawn merely because the accused has chosen not to lead defence evidence or has not steeped into the witness box.

30. Further it is also argued that in the judgment passed by the Hon'ble Supreme Court Rangappa v. Sri Mohan, (2010) 11 SCC 441, the Supreme Court held that the presumption under Section 139 is rebuttable and the accused can discharge the burden on the touchstone of preponderance of probabilities without necessarily leading independent evidence.

31. Further it is also argued that in the present case, the complainant's own evidence contains material contradictions and fails to establish the existence of a legally enforceable liability. Therefore, the accused was fully justified in relying upon the weaknesses in the complainant's case without entering the witness box or adducing independent defence evidence. The complainant having failed to prove the essential ingredients of the offence, the accused is entitled to an acquittal.

32. Here on perusal of the case file and the contentions taken by both the side i.e., the complainant and the accused and on perusal of the written arguments filed by the accused it is very clear to the knowledge to this court that the complainant has filed complaint U/s. 138 of NI Act. Further, the complainant contends that the friend of the accused by name Santosh Shetty S/o Shekar Shetty has obtained the loan amount of Rs.10,00,000/- on 07-06-2024, but has not repaid the same. But when the complainant has approached the accused, because this accused was the surety for the loan obtained by his friend, one Santhosh Shetty S/o Shekar Shetty, at that time this accused has given the cheque bearing No.000042 dated 25-02-2025 for the amount of Rs.3,30,000/-. Further upon presentation of the same before the complainant bank on 26-02-2025 for its shock the same has been returned as dishonoured as 'account blocked'. As such even though this complainant

has issued legal notice on 14-03-2025, but when the same was served to the accused on 15-03-2025 accused has sought for 15 days time to pay the amount, but the accused did not paid the same. Further, as accused has requested the complainant to re-present the cheque on 12-05-2025 the same has also been returned on 13-05-2025. As such this complainant has issued the legal notice on 23-05-2025. Further even though the notice served to the accused on 24-05-2025, but he has not paid the amount towards the dishonoured cheque. As such this complainant has filed this case.

33. Here as already discussed above the complainant PW-1 has examined himself as PW-1 and marked Ex.P-1 to Ex.P-5, i.e., cheque dated 25-02-2025, endorsement dated 13-05-2025 and legal notice dated 22-05-2025 and then the notice served to the accused on 24-05-2025. Here, it is very clear that the complainant have presented the cheque

within three months from the date of execution and after the dishonour of the cheque i.e., on 13-05-2025 the legal notice was issued on 23-05-2025 i.e., within one month. Further as the accused has served the notice on 25-05-2025 and the case was filed on 05-07-2025 within 45 days from the date of service. As such it is very clear that the complainant has filed the complaint within the statutory period. Further, as this complaint has filed the case and filed the Ex.P-1 to Ex.P-5 i.e., the authorisation letter, cheque, endorsement, legal notice, postal acknowledgment it is very clear that the complainant has contemplated the initial presumption in his favour.

34. On the other hand, it is very much necessary in this case to discuss that the complainant has contemplated the initial presumption in its favour, but it is the burden cost upon the accused to rebut the same either by cross - examination or by leading defence evidence. Further, in

this case the accused has cross-examined the PW1, but has not at all lead the defence evidence. Here, one point has to be observed that the main point which the accused has taken as a defence that, in his written arguments many defences and many contentions has been taken. As such it is very much important to discuss one by one.

35. First of all the first defence which is taken by the accused that, the complainant has initially deposed in his evidence that the accused is the principal borrower, but later he has stated that accused is the surety. Further, it is also argued by the defence counsel that complainant is not clear with the facts of the case and fails to establish the statutory presumptions under section 118 and 139 of NI Act. Here, in support of his contention the accused has furnished the citations Basalingappa V/s Mudibasappa, John K. Abraham V/s Simon C Abraham, and also Krishna Janardhana Bhat V/s Dhatthatreya. On perusal of these

cases it is very clear that the Hon'ble Apex Court has held that 'presumption under section 139 is rebuttable. Further, it is held that when the complainant's own evidence fails to establish legally enforceable liability the accused is entitled to benefit of doubt. Further, it is also held that complainant must prove fundamental facts. Here, it is very clear that the judgment passed by the Hon'ble Apex court it is very much applicable to the cases filed U/s.138 of NI Act. Further, it is to be noted that in this case, in the complaint and in the chief-examination of the complainant it is very clearly stated that the accused is the surety and the principal borrower is Santosh Shetty, S/o Shekar Shetty. But, in the cross-examination the PW1 has stated that accused is the principal borrower but subsequently in the very next answer he has stated that this accused is the surety for the one Santosh Shetty, S/o Shekar Shetty.

36. Further, it is also has to be seen that the complainant has not produced the surety documents, this is the contention taken by the accused, but here one thing has to be observed that in the complaint or in the chief examination he has not stated anything about the execution of the surety agreement or guarantee document, etc. As such there is no question arises with regard to non production of the same. As such it is very clear with regard to facts of the case, that the complainant very clearly proved that Ex.P-1 to Ex.P-5 are the documents for contemplating the presumptions and also to prove his case.

37. Further, with regard to other defences taken by the accused that, the complainant has to prove the legally enforceable debt. With this regard the accused stated that the principal borrower Santosh Shetty, S/o Shekar Shetty, has obtained the loan and on his default this accused has stood as a surety and he has given the cheque for

repayment of the debt. Here, according to the accused defence the complainant has not produced the loan related documents. As such this case is not maintainable. Here, as the complainant having examined himself as PW-1 and marked Ex.P-1 to P-5 to prove that cheque was given by the accused and the complaint was filed within the statutory period. Further, the accused has not at all denied the cheque and the signature as already discussed above definitely the presumption about section 118 and 139 of NI Act, presumption contemplates that there is a legally enforceable debt. Further even though the accused in this case has taken the defence that the complainant has not produced the loan documents, but no where the accused has denied the cheque and signature in it. Further, it has to be seen that the accused has not at all explained if there is no any loan availed by Santosh Shetty, S/o Shekar Shetty and this accused has not given the cheque for the same for the repayment, then it is the burden upon the accused to prove and rebut the presumption that the cheque before the court produced by the complainant is not for the reason given by the accused to the complainant, but it is for some other reason. But, in this case the accused has not at all stated any other reason to show that how his cheque has come to the custody of the complainant. As such on the failure of the accused to rebut the presumption, as contemplated in favour of the complainant, on mere contention cannot be considered. Hence, in my considered opinion, even though the accused taken the defences but utterly fail to rebut the presumption.

38. Therefore, it can be said that the complainant has successfully proved that the accused being the surety he is liable to pay the due amount as mentioned in the cheque and it is legally recoverable debt. Contrary to that, in order to prove the defence of the accused, he has not

produced any materials before the court. Further as such on the failure of the accused to prove the same it is presumed that the cheque was issued for the legally recoverable debt. Further on the other hand it is also clear that the accused has not proved that the entire repayment was made by his friend Santosh Shetty, S/o Shekar Shetty, as such it cannot be said that the Santosh Shetty, S/o Shekar Shetty has repaid entire loan amount and this accused was not due the amount as mentioned in the alleged cheque.

39. Therefore, according to the complainant the Ex.P-2 cheque was issued for the repayment of outstanding loan amount as accused was the surety. In this regard, it is well settled principles of law that, when the accused admitted his cheque as well as signature on cheque it shall be presumed that the accused had issued cheque for repayment of legally recoverable debt. Under such

circumstances the burden shifts on the accused to prove that, he has not issued Ex.P-2 cheque for repayment of loan amount of his friend. However, the accused has not at all produced any relevant and cogent evidence before this court.

40. Therefore, it can be said that the complainant has successfully proved that the accused was due the amount as mentioned in the cheque and it is legally recoverable debt. Contrary to that, in order to prove the defence of the accused, he has not produced any materials before the court. Further as such on the failure of the accused to prove the same it is presumed that the cheque was issued for the legally recoverable debt. Further on the other hand it is also clear that the accused has not proved that the entire repayment was made by the accused, as such it cannot be said that the accused has repaid entire loan

amount and he was not due the amount as mentioned in the alleged cheque.

41. Therefore, according to the complainant the Ex.P-2 cheque was issued for the repayment of outstanding loan amount. In this regard, it is well settled principles of law that, when the accused admitted his cheque as well as signature on cheque it shall be presumed that the accused had issued cheque for repayment of legally recoverable debt. Under such circumstances the burden shifts on the accused to prove that, he has not issued Ex.P2 cheque for repayment of loan amount. However, the accused has not produced relevant and cogent evidence before this court.

42. Further with regard to this case I would like to rely upon a judgment of our Hon'ble Supreme Court in **Crl.A.Nos.1233-1235 of 2022 (Arising out of SLP (Crl) Nos.7430-7432/22 @ D.No.13470/2019 in the matter of**

P.Rasiya V/s Abdul Nazer and another, wherein their lordships have held that,

> *" in a cheque bounce case U/Sec.138 of the NI Act the complainant is not required to spell out in the complaint, the nature of transaction or source of funds since the onus is on the accused to prove that the cheque was issued not towards a debt or liability."*

Therefore in view of the above ratio of our Hon'ble Apex Court, when the accused admitted the cheque in dispute and signature on it is belongs to his, it shall be presumed that the said cheque was issued by the accused for discharge of legally recoverable debt unless contrary is proved by the accused. In the case on hand the accused has failed to prove that he has not issued Ex.P2 cheque for discharge of legally recoverable debt.

43. Therefore, looking into these all documents and facts and circumstances, I am of the considerable opinion that, the complainant has successfully proved that, the accused had issued alleged cheque for repayment of due loan amount and it is a legally recoverable debt.

44. However, in the case on hand, the accused has failed to rebut the evidence of PW1. As such I am of the opinion that, the accused has issued Ex.P2 cheque for discharge of legally recoverable debt. Therefore the presumption has to be raised in favour of the complainant as contemplated under section 139 of N.I. Act.

45. Thus, it is clear that, the complainant has complied all the essential ingredients of Section 138 of NI Act to punish the accused for the alleged offence. Since the accused has not disputed the cheque and the signature the presumption U/s.139 of NI Act has to be drawn as held by the Hon'ble

Supreme Court in the case reported in **AIR 2020 Supreme Court 945** in the matter of **APS Forex Services Pvt. Ltd. vs. Shakti International Fashion Linkers and others** wherein their lordships held that,

> *Negotiable Instruments Act (26 of 1881), S.138, S139 -Dishonour of cheque – Legally enforceable debt or liability – Presumption as to – Accused admitting issuance of cheque, his signature on cheque and that cheque in question was issued for second time after the earlier cheques were dishonoured – Once the issuance and signature on cheque is admitted, there is always a presumption in favour of complaint that there exist legally enforceable debt or liability- No evidence led by accused to rebut the presumption – Plea by accused that cheque was given by way of*

security and same has been misused by complainant, not tenable – Accused liable to be convicted.

46. I have also relied upon a judgment of our Hon'ble Apex Court reported in **(2018) 8 Supreme Court Cases 469** in the matter of **T.P. Murugan (Dead) through Legal Representatives vs. Bhojan** wherein their lordships have held that,

> *'mere raising a doubt sans cogent evidence, with respect to the circumstances, presumption under section 139 of NI Act cannot be discharged '*

So on going through the above judgments of our Hon'ble Supreme Court, when the accused admitted issuance of cheque and his signature on cheque there is always a presumption in favour of complainant that there exist legally enforceable debt or liability when no material evidence lead by accused to rebut the presumption. Even also cleared from the above ratio that once there is no rebuttal evidence, accept oral defence, presumption cannot be held to be rebutted. In the case on hand, the accused has not produced relevant and cogent evidence to rebut the case of the complainant.

47. Therefore the materials placed by the complainant corroborates with each other with respect to the involvement of legally recoverable debt. So these all documents are clearly established that, the alleged cheque amount is legally recoverable debt. So in the absence of disproof of complainant case, I have no hesitation to believe the case of the complainant i.e., it has proved their case as per the standard of proof by producing relevant and cogent evidence. Even the entire materials indicates to the court that, complainant has filed the complaint in a proper manner i.e., within the stipulated time under section 138 of

Negotiable Instruments Act and further there is no endeavors on behalf of the accused to disprove the case of the complainant by producing relevant and cogent evidence. Accordingly I am of the considered opinion that the accused is liable to be convicted for the offence punishable under section 138 of Negotiable Instruments Act and I answered these points No.1 and 2 in the affirmative.

POINT No.3

48. In view of the findings on points No.1 and 2 to compensate the holder in due course the accused who has issued cheque even though that account is closed has to be punished suitably. Therefore considering the facts and circumstances, the accused is liable to pay the above amount with the reasonable interest as stated as compensation and expenses to complainant. Hence, I proceed to pass the following:-

O R D E R

Acting U/s.255(2) of Cr.P.C., the accused is convicted for the offence punishable U/s.138 of Negotiable Instruments Act and sentenced to pay a fine **Rs.3,66,000/- (Rupees Three Lakhs Sixty six thousand only)**

In default of payment of fine amount he shall under go simple imprisonment for 03 (three) months.

Further, acting U/s.357(1) of Cr.P.C. a sum of **Rs.3,63,000/- (Rupees Three lakhs sixty three thousand only)** is order to be paid to complainant as compensation and remaining amount of **Rs.3,000/- (Rupees three thousand only)** shall go to the state.

It is made it clear that in view of section 421 of Cr.P.C. the liability of accused to pay the compensation will not be absolved even if he under goes default sentence.

The bail bond executed by the accused and surety stand canceled.

Supply free copy of judgment to the accused.

(Typed directly on computer to my dictation by the stenographer in the chamber, corrected and then pronounced by me in the open court on this the 23rd day of July 2026.)

(Smt. NIRMALA .S.)
XXVI ACJM, Bengaluru.

ANNEXURE

Witnesses examined for the Complainant:

PW.1 : B. Vijaya Kumar.

Witness examined for the accused:

Nil.

List of Documents marked for the Complainant:

Ex. P-1	Board Resolution
Ex. P-2	Cheque
Ex. P-2(a)	Signature of the accused
Ex. P-3	Bank Endorsement
Ex. P-4	Copy of legal notice
Ex. P-5	Postal acknowledgment.

List of Documents marked for the accused:

Nil.

(Smt. NIRMALA .S.)
XXVI ACJM, Bengaluru.