



**IN THE COURT OF THE Vth ADDL. SMALL CAUSES
JUDGE & XXIVth ADDL. CHIEF JUDICIAL MAGISTRATE,
Court of Small Causes, Mayo Hall Unit, Bangalore
(SCCH-20)**

Present : **Sri. P. Shivaraj,**
B.Com. LL.B.

**Vth Addl. Small Causes Judge,
& XXIV A.C.J.M.**

Dated this the 28th day of June 2025

C.C. NO : 58049/2018

Complainant:-

Smt.Nagamani.N, 65 years
W/o Sri.S.M.Basavaraj
Residing at No.408, 4th G Main,
HRBR Layout, 2nd Block,
(Near Murali Gas Agency)
Kalyananagar, Bangalore – 560043

(Sri.CVS. Advocate.)

// VS //

Accused:-

Sri.Prasannaiah,
S/o Brumayya, “AMSHUL” Nivas
No.296, 2nd main, Park Road,
3rd phase, JP Nagar,
Bangalore – 560078

(Sri.NC, Advocate.)

Offence : U/s/ 138 of N.I Act of 1881
Plea of accused : Pleaded not guilty
Final Order : Accused is convicted
Date of judgment : 28.06.2025

**(P. SHIVARAJ)
V Addl. Small Causes Judge,
& XXIV A.C.J.M.**



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

The complainant Smt.Nagamani W/o S.M.Basavaraj has filed the private complaint U/s 200 of Cr.P.C. against the accused alleging that, accused has committed the offence punishable under section 138 of Negotiable Instrument Act, 1881(For short N.I.Act,1881).

2. Complainant case is as follows:

Complainant husband and accused are the family friends. Complainant has sold her property and deposited the sale consideration in her bank account and she was looking for investing the said amount. Accused was aware of the said fact, he requested the complainant to advance the hand loan amount of Rs.25,00,000/- for the development of his business. Complainant has paid the hand loan amount of Rs.25,00,000/- to the accused and accused has agreed to repay the said loan amount at earliest. Accused has failed to repay the said amount. In order to repay the aforesaid loan amount, accused has issued the cheque bearing No.000478 dated 25.03.2018 for Rs.25,00,000/- in favour of complainant which is drawn on Karur Vysya Bank, Bangalore.

3. As per the instructions of the accused complainant presented the aforesaid cheque for encashment through her banker. The aforesaid cheque was returned dishonored with an endorsement **“Funds Insufficient”** in the accused bank account, to that effect,



complainant received the cheque return memo from her banker on 11.06.2018. Complainant informed the aforesaid fact to the accused and she has issued legal notice by way of RPAD to the accused on 02.07.2018, and the said RPAD returned on 04.07.2018. Further, accused failed to repay the cheque amount. Complainant alleged that, accused has intentionally not maintained the sufficient amount in her bank with an intention to dishonor the cheque. Inasmuch, accused has committed the offence punishable under section 138 of N.I. Act. On the aforesaid allegations, the complainant approached this court and prays this court to punish the accused and to award the compensation.

4. Originally the private complaint was filed before Hon'ble LVIIIth ACMM court Mayo hall unit Bengaluru. The learned presiding officer of that court, took the cognizance for the offence punishable U/s 138 of N.I. Act and recorded the sworn statement of the complainant and returned the original documents. On finding prima-facie case, process was issued to the accused.

Later as per special notification No. ADM/1/8/2023 dt.24.05.2023, case transferred to this court.

5. After service of summons to the accused he appeared before this court and he got released on bail on 16.01.2020. Papers of the prosecution were supplied to the accused. The substance of the accusation is readout



to accused, in the language known to him, he pleaded not guilty and submit that he is having defense to make. Accused stood absent from the date of obtaining the bail. Later proclamation was issued against him and orders passed to attach his movable property through jurisdictional police. Later on 17.04.2025, he was secured before this court.

6. In order to prove the guilt of the accused, the complainant adopted the evidence led by her at pre-summoning stage as her Examination-in-chief and produced and marked 6 documents which are marked as Ex.P.1 to P.6. Accused has not chosen to cross examine the PW.1 though his application filed under section 145(2) of N.I.Act was allowed on 10.06.2025, and there is no material on record to show that accused is prevented from cross examining the PW.1 accordingly cross examination of PW.1 is taken as nil.

7. Accused statement is recorded as per Sec.313 of Cr.P.C. he denied the same and submitted that he is having evidence to lead.

8. Accused has not chosen to lead the evidence after obtaining sufficient opportunity from this court and there is no material on record to show that accused is prevented from appearing from this court to lead his evidence. Accordingly, his evidence is taken as Nil.



9. I have heard the arguments from the counsel appearing for complainant. Accused is permitted to file his written arguments on merits. Accused has failed to comply the order. Accordingly, arguments from the accused side is taken as not addressed/canvassed.

10. The following points that arise for my determination:-

:-P O I N T S:-

1. ***Whether the complainant proves beyond reasonable doubt that, the accused has committed the offence punishable U/s 138 of the N.I Act, as alleged in the Complaint?***
2. ***What Order?***

11. After carefully going through the materials available on record and taking into consideration of facts and circumstances of the case, my finding to the above points are as follows:

Point No.1: In the Affirmative.

Point No.2: As per final order, for the following:

R E A S O N S

12. **Point No.1:** PW1 being the complainant, she reiterated the complaint averments in her sworn statement, which is treated as her examination-in-chief affidavit.

13. Accused has not disputed nor denied the issuance of cheque as per Ex.P.1 and his signature there on. Complainant has established the fact of issuance of cheque by the accused for the discharge of his liability, inasmuch,



the initial statutory presumption attached to the cheque has to be raised in favour of the complainant as per Section 118 and 139 of N.I.Act.

14. Complainant has relied on the cheque as per Ex.P1 and cheque return memo as per Ex.P.3. Complainant has issued the mandatory notice as per Ex.P.4 within 30 days from the date of receipt of Ex.P.3. As per Ex.P.6, the said RPAD cover returned and accused failed to pay the cheque amount. complainant has filed the private complaint within the stipulated period of time and she has complied all the ingredients of Sec.138 of N.I. Act.

15. The accused has not chosen to cross examine the PW.1 to improbabilise the version of complainant and he has not chosen to put forth or to lead his probable evidence so as to create the doubt regarding the existence of the alleged debt and the presumed facts. There is no material on record to show that accused has rebutted the initial presumption attached to the cheque. If the version of complainant is false, accused could have effortlessly cross examine the PW.1 to destroy the version of complainant or he could have tendered the documents to show that he has repaid the entire amount to the complainant. Accused could have shown that he has sufficient amount in his bank account as on the date of cheque. Apparently accused has not taken pain to comply the aforesaid facts.



16. Accused has not placed any cogent and probable evidence to convince the court that, the presumed facts does not exist. Accused has not placed probable evidence nor elicited any material facts from the mouth of PW1 to rebut or to dislodge the statutory presumption which is raised in favour of complainant. In other words accused has not placed any evidence to show that, alleged debt as alleged by the complainant does not exist. Inasmuch the initial statutory presumption attached to cheque, cannot be said to have been rebutted by the accused. Furthermore the abstinence of accused before this court and his conduct that is not choosing and willing to lead his evidence and not choosing to cross examine the PW.1, categorically shows and establishes that he has accepted his guilt and liability towards the complainant. Such being the case, the version of the complainant cannot be doubted. Hence, with the aforesaid discussion based on the materials available on record and by considering the facts, and attending circumstance of the case, **I am answering this point in the affirmative.**

17. POINT NO.2:- For the foregoing reason and discussion, on point No.1, I proceed to pass the following:

ORDER

Exercising the power conferred U/sec 255(2) of Cr.p.c. accused is convicted for the offence punishable U/s.138 of the Negotiable Instrument Act,1881.



Accused is sentenced to pay a fine amount of Rs.26,55,000/- to the complainant within two months from the date of this order, in default he has to under go simple imprisonment for a period of two years.

Out of the said fine amount, an amount of Rs.26,50,000/- is ordered to be paid to the complainant as compensation. The remaining amount of Rs.5,000/- shall be confiscated to the state towards litigation expenses.

The bail bond and surety bond of the accused shall continue for next 6 months as per Sec.437-A of Cr.P.C.

All the interim applications pending if any stands disposed of.

Office is directed to supply the free copy of this judgment to the accused forthwith.

(Dictated to the stenographer, transcribed and computerized by him, corrected by me on computer and then pronounced by me in the open court on this the 28th day of June -2025)

(P. SHIVARAJ)
Vth Addl. Judge & XXIVth ACJM
SCCH-20, Mayohall Unit, Bangalore

ANNEXURES:

1) List of Witnesses Examined on behalf of the Complainant company:

PW.1 : Smt.Nagamani

2) List of exhibits marked on behalf of the Complainant company:

Ex.P1 : Original Cheque
Ex.P2-3 : Cheque return memos
Ex.P4 : Office copy of Legal notice
Ex.P5-6 : Postal receipt & RPAD cover

**3) List of Witnesses Examined on behalf of the Accused:-**

NIL

4) List of exhibits marked on behalf of the Accused:-

NIL

(P. SHIVARAJ)**Vth Addl. Judge & XXIVth ACJM**
SCCH-20, Mayohall Unit, Bangalore