KATK010003702026

IN THE COURT OF VII ADDL. DIST. & SESSIONS JUDGE, AT TUMAKURU.

Dated this the 29th day of June 2026

PRESENT BEFORE:

Smt.Yasmin Parveen.Ladkhan
B.A.LL.B(Spl.)
VII Addl. District & Sessions Judge
Tumakuru

Crl.Appeal No.12/2026

Appellant: Sri T.S.Basavaraju,
S/o Late Siddappa,
Aged about 56 years,
R/at Behind Shishuvihara,
Thotadasalu, Agrahara,
Tumakuru Town,
Tumakuru Taluk,
Tumakuru District.

(Sri H.N.Adv,)

V/s

Respondent : Sri. H.D.Manjunatha,
S/o Late Doddaiah,
Aged about 56 years,
R/at Hosahalli village,
Bheemasandra Post,
Kasaba Hobli,
Tumakuru Taluk,
Tumakuru District.

(Sri P.S.Adv,)

JUDGMENT

The appellant has preferred this appeal U/sec.374(3) of Cr.P.C., being aggrieved by the judgment and order of sentence passed by learned II Addl.Civil Judge & J.M.F.C, Tumakuru in C.C.No.8385/2022 dated 15.10.2025.

II. For the sake of convenience, the parties herein are referred with the original ranks before the Trial court.

III. The complainant has filed a private complaint against accused under section 200 of Cr.P.C. alleging the offence punishable under section 138 and 142 of Negotiable Instruments Act in P.C.R.No.344/2022.

IV The Trial Court after recording sworn statement of complainant as P.W.1 and got marked Ex.C.1 to Ex.C.5 and thereafter took cognizance on 14.06.2022 and registered as C.C.No.8385/2022.

V. After due service of summons the accused appeared through his counsel and was enlarged on bail.

VI. The Trial court framed substance of accusation on 26.05.2023 and the accused pleaded not guilty and claimed to be tried.

VII. On 15.07.2023, complainant's advocate filed memo to adopt sworn statement as evidence of complainant and fully cross-examined by accused.

VIII. After closure of the evidence of the complainant, on 27.07.2024, the statement of accused under section 313 of Cr.P.C. is recorded by the Trial court.

The accused has denied the incriminating circumstances found in the complainant's evidence and has submitted he has nothing to say and will lead evidence.

IX. Accused got examined as D.W.1 and got marked Ex.D.1, Ex.D.2 and fully cross-examined by the counsel for complainant and also got examined a witness as D.W.2 and fully cross-examined by the counsel for complainant.

X The Trial court after hearing arguments and on perusal of oral and documentary evidence placed before it, raised the following points for consideration as under:

1. Whether the complainant proves beyond reasonable doubts that the accused has borrowed hand loan of Rs.5,00,000/- from the complainant and issued a cheque, bearing No.000057 dated 19.02.2022 drawn on Lakshmi Vilas Bank. Balaji Tower, near Tumakuru University, Ashoka Nagar, B.H.Road, Tumakuru in favour of complainant to discharge the legal debt and when he said Cheque was presented for encashment and it was returned for “Funds insufficient” and inspite of service of legal notice the accused has not paid the cheque amount and thereby committed the offence punishable U/Sec.138 of Negotiable Instruments Act?

2. What order?

and answered Point No.1 in the Affirmative and Point No.2 as per final order and passed the judgment on 15.10.2025 as under:

“ The accused is found guilty of offence punishable U/Section 138 of Negotiable Instruments Act.

Acting U/Sec.255(2) of Cr.P.C. the accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instruments Act and he is sentenced to pay fine of Rs.5,00,000/-.

In default of payment of aforesaid amount of fine, the accused shall undergo simple imprisonment for a period of 6 months.

Out of the fine amount Rs.5,00,000/- the amount of Rs.4,90,000/- shall be paid to the complainant as compensation U/Sec.357 of Cr.P.C. and Rs.10,000/- shall be remitted to the State.

Further, it is made clear that in view of proviso to Sec.421(1) of Cr.P.C. the accused shall not be absolved of his liability to pay compensation amount of Rs.5,00,000/- awarded U/sec.357 of Cr.P.C. even if he undergoes the default sentence.

The bail bond and surety bond of the accused and surety respectively stand cancelled.

Office is directed to supply copy of the Judgment to the accused free of cost forthwith."

XI. Being aggrieved by said judgment of conviction dated 15.10.2025 the accused has preferred this appeal.

XII. The grounds of the appeal are as under:

The impugned Judgment is opposed to law and facts of the case and is liable to be set aside. The accused has not given a Cheque for any legal recoverable debts, the complainant has not given any money to the accused, the accused acting as mediator in purchasing site in Vokkodi village by the wife of the complainant, in this regard he was given blank Cheque for security purpose, with a condition that after completion of the said transaction the Cheque would be returned to the accused, but the complainant without doing so, misused the said Cheque and filed false case against the accused, on this ground the impugned judgment is liable to be set aside. The impugned judgment and order of conviction and sentence is basing on one sided evidence of the complainant, hence the impugned order and Judgment passed by the Trial Court is liable to be set aside. The Trial Court has erroneously come to the conclusion and the finding of the Trial Court is perverse, capricious and same is liable to be revised and set aside. The respondent has not produced any iota of evidence or documents to show the financial capacity of lending huge amount, under these circumstances, it is liable to be set aside. Hence, prayed to allow the appeal.

XIII The Trial court records were summoned.

XIV. The counsel for appellant submitted that his arguments may be taken as heard.

The counsel for respondent addressed arguments.

XV. I have perused the materials placed before the court.

XVI. The following points have arisen for my consideration:

1. Whether the Trial court is justified in answering Point No.1 in the Affirmative and Point No.2 as per final order and ultimately convicting the accused for the offence punishable under section 138 of N.I.Act?

2. Whether the judgment and sentence of the Trial court is arbitrary, erroneous, capricious, perverse and calls for interference of this court?

3. What order?

XVII. My answer to the above points are as under;

Point No.1 : In the Affirmative

Point No.2 : In the Negative

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

REASONS

XVIII. **Point No.1 & 2**:- These two points are interlinked with each other, hence taken up together for common discussion in order to avoid the repetition of facts.

(A) On perusal of the materials placed before the court reveals that the present respondent who was complainant before the Trial Court has filed a private complaint before the Trial Court alleging the offence punishable U/Sec.138 and 142 of N.I Act against the present appellant/accused. The complainant has lodged private complaint in P.C.R.No.344/2022 under section 200 of Cr.P.C. contending that the accused and the complainant are known to each other since 5-6 years and during the 1st week of November 2021 accused borrowed a sum of Rs.5,00,000/- from the complainant for his family legal necessities agreeing to pay and assured him to repay the said amount within 3 months. After 03 months when the complainant demanded for the money, accused has issued a Cheque bearing No.000057 dated 19.02.2022 for a sum of Rs.5,00,000/- drawn on Lakshmi Vilas Bank, Ltd., Balaji Tower, near Tumakuru University, Ashoka Nagar, B.H.Road, Tumakuru. On the basis of assurance given by the accused complainant presented the said Cheque through his Banker Karnataka Bank of Ltd., Vivekananda Road, Tumakuru on 19.02.2022, but the said Cheque returned with an endorsement “Funds insufficient“ and on 22.02.2022 it was intimated to the accused, but the accused requested him to provide one month time, as such the complainant obliged the request of the accused and presented the Cheque for encashment on 25.03.2022, but the said cheque was dishonoured and returned with an endorsement “Funds insufficient” on 28.03.2022. Hence, the complainant got issued a legal notice dated 16.04.2022 and the said notice was duly served upon the accused on 19.04.2022, but inspite of it, the accused neither repaid the amount nor replied to the notice and with an intention to cheat the complainant, accused has committed the offence punishable U/sec.138 of N.I. Act, as such, the complainant registered a private complaint before the Trial Court in private complaint i.e., P.C.R No.344/2022.

(B) The Trial Court after recording sworn statement of the complainant as C.W.1 and got marked Ex.C.1 to Ex.C.5, on 14.06.2022 took cognizance of the offence punishable under section 138 of N.I Act against accused and registered C.C.No.8385/2024.

(C) After due service of summons, the accused has appeared before the Trial Court through his counsel and was enlarged on bail and on 26.05.2023 the Trial Court has recorded the plea, the accused has pleaded not guilty and claimed to be tried.

(D) On 15.07.2023, complainant's advocate filed memo to adopt sworn statement as evidence of complainant and thereafter complainant is fully cross-examined by counsel for accused.

(E) On 27.07.2024 the Trial Court recorded statement of accused under section 313 of Cr.P.C. and accused has denied incriminating circumstances found in the evidence of the complainant and submitted he has nothing to say and will lead evidence and lead defense evidence of himself as D.W.1 and got marked Ex.D.1 and Ex.D.2 and fully cross-examined by counsel for complainant.

(F) The Trial Court after hearing the arguments on 15.10.2025 passed the Judgment as under:

" The accused is found guilty of offence punishable U/Section 138 of Negotiable Instruments Act.

Acting U/Sec.255(2) of Cr.P.C. the accused is hereby convicted for the offence punishable U/Sec.138 of Negotiable Instruments Act and he is sentenced to pay fine of Rs.5,00,000/-.

In default of payment of aforesaid amount of fine, the accused shall undergo simple imprisonment for a period of 6 months.

Out of the fine amount Rs.5,00,000/- the amount of Rs.4,90,000/- shall be paid to the complainant as compensation U/Sec.357 of Cr.P.C. and Rs.10,000/- shall be remitted to the State.

Further, it is made clear that in view of proviso to Sec.421(1) of Cr.P.C. the accused shall not be absolved of his liability to pay compensation amount of Rs.5,00,000/- awarded U/sec.357 of Cr.P.C. even if he undergoes the default sentence.

The bail bond and surety bond of the accused and surety respectively stand cancelled.

Office is directed to supply copy of the Judgment to the accused free of cost forthwith."

XIX Being aggrieved by said Judgment and sentence of conviction the accused has preferred this appeal on the grounds as mentioned at paragraph No.XII.

XX **Now, let us evaluate the oral and documentary evidence placed before the Trial court.**

(A) On perusal of the materials placed before the court reveals that the sworn statement of the complainant is recorded as C.W.1 by filing affidavit evidence who has reiterated the contents of the complaint and in his further sworn statement got marked as many as 5 documents i.e., Ex.C.1 Cheque and also produced Ex.C.2 which is an endorsement issued by the bank, Ex.C.3 is copy of legal notice dated 16.04.2022 issued to the accused by complainant through his counsel, Ex.C.4 is the postal window receipt, Ex.C.5 is the postal track consignment detail to show that the said legal notice is duly served upon the accused.

(B) The counsel for accused has cross-examined P.W.1. In his cross-examination P.W.1 has admitted that he is having 8 acres of land at Hosahalli, Kasaba Hobli and he is doing agricultural work. He has admitted that he knows the accused since 8 to 10 years. He has denied that during 2020 he has purchased a site in his wife’s name and the accused was the mediator for the said transaction and further volunteered that he has purchased the site but not through accused. He has denied that the owner of the said land is

S.Gayithri and T.S.Anil Kumar who were got introduced them by the accused. He pleads ignorance that prior to sale of the said land to his wife, said Gayithri has executed the sale agreement to one Syed Muneer on 25.07.2017 and in this regard there was dispute between said Gayithri and Syed Muneer. He has denied that after coming to know about the said fact, in order to avoid the problems, they have obtained the blank Cheque from the accused for security purpose. He has denied that on 28.10.2020, after making the negotiations with said Gayithri and Anil Kumar said sale agreement was executed. He has denied that after completing the transactions of sale deed accused asked to return the Cheque, but they failed to return the said Cheque. He has admitted that he has paid the amount to the accused through cash and the said fact was not written in the notice Ex.C.3 or in the complaint. He has admitted that he has not produced any document to show that, during 1st week of November 2021, he possessed

Rs.5,00,000/- with him. He has admitted that at the time of lending the money to accused, his wife, his daughter, accused and his friend were present. He has admitted that on 22.02.2022 the said cheque was dishonoured and in this regard he has produced document before the court. He denies that he is deposing falsely that he has given amount to the accused. He has denied that except his signature in Ex.C.1 the other writings were written by himself. He has admitted that he knows to read and write Kannada language. He has denied that after execution of the sale deed, he will return the cheque to the accused, but he has misused the same. He has denied that Ex.C.2 to Ex.C.5 documents are created only for the purpose of this case.

(C) After closure of complainant’s evidence, statement of accused U/Sec.313 of Cr.P.C. is recorded wherein the accused has denied the incriminating circumstances found in the evidence of the complainant and submitted he has nothing to say and will lead evidence.

(D) The accused has got examined as D.W.1 and has deposed before the court that the complainant has purchased a site from him and there was a dispute with the said site. The said site was executed by one Syed Muneer through sale agreement as per Ex.D.1 and it was made by Gayithri Devi and her son Anil Kumar. He has deposed that the said dispute was compromised through him between Syed Muneer, Gayithri Devi and her son Anil. He has deposed that the said site was purchased by the complainant. The said sale agreement is as per Ex.D.2. He has deposed that at the time of negotiations, complainant has paid Rs.5,00,000/- as advance. He has deposed that the khatha was not made for the said site and complainant has obtained Cheque from him for the purpose of security. He has deposed that after the khata, he has called the complainant and got the site registered in his wife’s name. He has deposed that after the registration of the said site, complainant was supposed to give Rs.2,26,000/-, but he has not paid the said amount. He has further deposed that the complainant has not returned the Cheque also and the complainant has filed a false case against him. He has deposed that he is not due of any amount to the complainant and prayed to dismiss the petition.

(E) The counsel for complainant has fully cross-examined him. In his cross-examination D.W.1 admits that Ex.D.1 sale agreement is not executed between himself and the complainant. He has admitted that complainant has not purchased the said site from him, as he is not owner of said site. He has admitted that he has not produced any document in respect of Ex.D.2. He has admitted that Gayithri Devi and Anil has executed sale agreement to the complainant. He has admitted that on 25.07.2017 the sale agreement was executed by Gayithri Devi and Anil in favour of the complainant. He has admitted that he do not remember the date, month and year on which the complainant has paid the amount. He has admitted that in the sale agreement at page No.2 it is mentioned that the said site was sold at Government rate of Rs.7,26,000/- and the said amount was received in installments. He has denied that in order to escape from paying Rs.5,00,000/- he has created the false documents. He had admitted that there are cases filed against him i.e., in C.C.No.4099/2017 and C.C.No.87/2018 before V Addl.Civil Judge & JMFC, Tumakuru by one H.G.Savitha for an amount of Rs.56,00,000/- Cheques and the said cases were posted for Judgment on 07.07.2025. He has admitted that on 16.04.2022 as per Ex.C.3 complainant has issued legal notice against him and on 19.04.2022 it was served on him as per Ex.C.5 and he has also admitted that he has not replied for the said notice and he had no any inconvenience to reply to said notice. He has denied that in order to escape from the paying the amount he has created Ex.D.1 and Ex.D.2 documents. He has admitted that he has studied up to PUC and he know to write and read Kannada and English language.

(F) C.S.Anil Kumar is examined as D.W.2 who has deposed that he owns a site at Vokkodi village. Manjnath has purchased the said site and said sale deed was executed and got registered on 23.10.2020. He pleads ignorance that for how much amount the said site was sold. He has deposed that he has executed the sale agreement in favour of one person belonged to Muslim community. He has deposed that at the time of execution, he called up the said person who belonged to Muslim community and the said Basavaraju has paid amount to him who is present before the court.

D.W.2 is cross-examined by counsel for complainant. In his cross-examination. D.W.2 has admitted that he is residing at Chikkapete and doing hotel business. He has admitted that there was no any transaction between him and the complainant. He has admitted that he do not know anything about the transactions between the accused and the complainant. He has admitted that there is no any inconvenience for his mother to come before the court. He has admitted that in the sale agreement Ex.D.2 the site mentioned in the schedule which was given at Government rate Rs.7,26,000/- and the said amount was received in installments. He pleads ignorance that when the said site was granted to him. He pleads ignorance that it was granted in his favour or others. He has admitted that he along with his mother have executed the sale agreement in favour of one person belonged to Muslim community. He denies that the said transaction was made clear by the accused. He pleads ignorance that the valuation of the Stamp paper on which the sale agreement was written. He has admitted that the said sale agreement was written on 2 pages and no witnesses have signed it. He has admitted that who was scribe of the said sale agreement. He has denied that he has not executed the sale agreement to any body. He has admitted that he has studied upto Diploma and admitted that after reading the document he used to sign it. He denies that he has not executed any sale agreement or sale deed. He admits that he do not know Narasimharao and Munna, Gayithri and Sathyanarayana are his parents. He has denied that Narasimharao and Munnabai have given affidavit to him.

D.W.2 in his further cross-examination has pleaded ignorance that Kiran and T.R Basavaraju have signed on Ex.D.2. On 01.09.2008 his father has sold the site Ex.D.2 to others i.e., to Narasimhappa @ Narasimhaiah. He pleads ignorance that for how much amount his father has sold the said site and he further volunteers that again he has purchased the said property. For the question that the said Narasimhappa after purchasing the said site, has transferred the khatha into his name, he answered that he do not know about it. He has admitted that from the said Narasimhappa, his mother had purchased the said site and khatha was transferred in her name and the said site was shared to Gayithri by Tahsildar, Tumakuru. He pleads ignorance that the said site was sold in favour of Munnabai W/o Narasimharao by President of Vokkodi Mandal Panchayath. He pleads ignorance that one Munnabai W/o Narasimhara have given letter of agreement in favour of his mother. He has denied that there is no any inconvenience to his mother to come before the court to give evidence. He has admitted that he has not produced any document before the court to show that his mother was suffering from ill health. He denies that in order to assist the accused he is deposing falsely. He has admitted that he do not know about the transactions between the accused and the complainant.

XXI **Now, let us know what Sec.138 of N.I Act says:**

Sec.138 of N.I. Act which reads as under;

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 provisions of this Act, be punished with imprisonment for 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 six 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 or other liability" means a legally enforceable debt or other liability.]

So, Sec.138 of N.I.Act deals with the dishonor of certain cheques for insufficiency of funds in the accounts. Whenever any complaint under section 138 of N.I.Act is filed it must contain the following ingredients (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 pre-supposes a legally enforceable debt (iii) cheques so issued had been returned due to insufficiency of funds.

Sec.138 of N.I.Act Legislature has clearly stated that for the dishonoured cheque the drawer shall be liable for conviction if the demand is not made within 15 days of the receipt of the notice, but this is without prejudice to any other provision of the Act. If the cheque amount is paid within the above period or before the complaint is filed the legal liability under section 138 will cease and the recovery of the other demands as compensation costs, interest etc., a civil proceeding will lie. When a notice is returned by the sender as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (b) of the proviso to section 138 of the Act.

XXII. In catena of judgments of Hon'ble Apex Court has held "once the cheque is issued by the drawer a presumption under section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under section 138 of the Act by the drawee or the holder of the cheque in due course.”

Under sec.139 of NI Act there is a legal presumption that the cheque was issued for discharging an antecedent liability and that presumption can be rebutted only by the person who drew the cheque. The aforesaid presumption is in favour of the holder of cheque. It is not mentioned in the section that the said presumption would operate only against the drawer. After all a presumption is only for casting the burden of proof as to who should advance evidence in a case. It is open to any one of the accused to adduce evidence to rebut the said presumption.

XXIII. The appellant has preferred appeal U/Sec.374(3) of Cr.P.C. The provisions of section 374(3) of Cr.P.C. which reads as under:

Appeals from conviction:

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted an a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in Sub-Section (2), any person:

(1) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced U/Sec.325 or

(c) respect of whom an order has been made or a sentence has been passed U/Sec.360 by any Magistrate, may appeal to the Court of Session.

XXIV. The presumption available under section 139 can be rebutted by the accused by adducing evidence, but the appellant/ accused has failed to discharge the burden cast upon him. The accused has cross-examined P.W.1 but nothing in favour of accused / appellant is elucidated from the mouth of the complainant. The accused has lead defense evidence, but not lead any rebuttal evidence to prove his defense nor produced any documents that he has initiated legal action against complainant that complainant has mis-used his cheque i.e., Ex.C.1.

XXV. The presumption available under section 139 can be rebutted by the accused by adducing evidence, but the appellant/ accused has failed to discharge the burden cast upon him. The accused has cross-examined P.W.1 but nothing in favour of accused / appellant is elucidated from the mouth of the complainant. The appellant has also filed memo for amendment of the application filed U/sec.5 of Limitation Act and in order to adjudicate the matter fully and finally the memo came to be allowed and counsel for appellant permitted to carryout necessary amendment to application filed U/Sec.5 of the Limitation Act, but not carried out amendment nor furnished amendment application i.e., U/Sec.5 of Limitation Act.

XXVI. On perusal of the order sheet dated 24.01.2026 appellant got matter advanced and order of suspension. Appellant instead of complying the order, approached Hon'ble High Court of Karnataka in Crl.Petition No.2721/2025 seeking permission to comply order dated 24.01.2026. On 27.02.206 Hon'ble High Court of Karnataka gave direction to comply direction of this court within one week.

The appellant has also filed memo for amendment of the application filed U/sec.5 of Limitation Act and in order to adjudicate the matter fully and finally the memo came to be allowed and counsel for appellant permitted to carryout necessary amendment to application filed U/Sec.5 of the

Limitation Act.

The appellant /accused has lead defense evidence but not lead any rebuttal evidence to prove his defense nor produced any documents that he has initiated legal action against complainant that complainant has mis-used his cheque i.e., Ex.P.1, hence, I do not find any reasons to interfere with the reasonings as the Trail court has rightly appreciated the oral and documentary evidence placed before it. I concur with the findings given by the Trial Court and. Hence, point No.1 is answered in the affirmative and point No.2 is answered in the Negative.

XXVII. **Point No.3:-** For the reasons stated and discussed as above, I proceed to pass the following;

ORDER

The appeal preferred by the appellant under Section 374(3) of Cr.P.C. is hereby dismissed.

Consequently, the judgment and sentence passed by II.Addl.Civil Judge and JMFC, Tumakuru in C.C.No.8385/2022 dated 15.10.2025 is hereby confirmed.

Office is hereby directed to transmit the Trail court records along with the copy of this judgment forthwith.

(Dictated to the Stenographer Grade-I directly on computer, typed, printout taken by her, corrected, signed and then pronounced on this the 29th day of June 2026)

(Smt.Yasmin Parveen. Ladkhan)
VII Addl.Dist. & Sessions Judge,
Tumakuru.