KAUP030066912022

IN THE COURT OF THE III ADDL. CIVIL JUDGE & JMFC, UDUPI

Present: Smt. Shwethakshi., B.A., LL.B.
III Addl. Civil Judge & JMFC, Udupi.

Dated: This the 03rd day of January 2026.

C.C. No.3955/2022

Prashanth Nayak,
Aged about 51 years,
S/o Late Saadananda Nayak,
Kajarguthu House, Hiriyadka Post,
Anjar Village,
Udupi Taluk and District.

......**Complainant**
(Rep. by V.S., Advocate)

Vs.

Surendra Sherigar,
S/o Late Vittala Sherigar,
Gandhi Maidana,
Hiriyadka Post,
Via: Hiriadka,
Udupi Taluk – 576 113..

…..**Accused**
(Rep. by Sri N.K. Advocate)

1.	The offence complained of	U/s.138 of N.I.Act
2.	Date of Registration of private complaint	04-02-2022
3.	Sworn Statement/Evidence of complainant recorded on	27-09-2022
4.	The private complaint registered as Criminal case	10-10-2022
5.	Nature of Trial	Summons Trial

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6.	Substance of Accusation Recorded	28-08-2023
7.	Statement of the accused under Section 313 of Cr.P.C. recorded	28-08-2023
8.	Final Order	Accused found guilty
9.	Date of final Order	03-01-2026

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(Smt. Shwethakshi)
III Addl. Civil Judge & JMFC,
Udupi.

JUDGMENT

The complaint is filed against the accused Under Section 200 of Cr.P.C. for the offence punishable under Sec.138 of the Negotiable Instruments Act, 1881. (In short for N.I.Act).

2. The case of the complainant is as follows:

The Accused borrowed a sum of Rs.1,23,000/- (Rupees One Lakh Twenty-Three Thousand only) from the Complainant for his personal necessities and promised to repay the same within a short time. Despite repeated demands made by the Complainant, the Accused failed to repay the said amount. Ultimately, towards discharge of the said legally enforceable debt, the Accused issued a cheque bearing No. 354531 dated 21-09-2021 for Rs. 1,23,000/-, drawn on Bank of Baroda, Hiriadka Branch, in favour of the Complainant. When the Complainant presented the said cheque for encashment through his banker, the same was returned unpaid on 01-11-2021 with the endorsement “Funds Insufficient”. The Accused issued the cheque knowing fully well that there were insufficient funds in his account, with dishonest intention to evade repayment. Consequently, the Complainant caused a legal notice dated 11-11-2021 to be issued to the Accused by Registered Post A/D, demanding payment of the cheque amount within 15 days from the date of receipt of the notice. The said notice was issued within the statutory period. The said notice was duly served on the Accused on 16-11-2021, as evidenced by the postal acknowledgment card. The Accused has neither replied to the said notice nor paid the cheque amount till date. Hence, this complaint is filed.

3. This Court in view of the judgment of Hon’ble Supreme Court of India in **Indian Bank Association and others Vs Union of India reported in 2014(5) SCC 590**, has inclined to treat the sworn statement affidavit of the proprietor of the complainant /PW1 as his examination in chief. While recording the sworn statement of PW.1 he has produced Ex.P1, P1(a) to Ex.P5.

4. After taking cognizance of the case and registering the same is criminal register and issued the summons under Sec.204 of Cr.PC., against the accused.

5. In pursuance of the summons issued to the accused was duly served but he didn’t appeared before this court, after issuance of NBW, the accused appeared before this court through his counsel and was enlarged on bail. Copy of the complaint paper supplied to him. On the basis of the complaint and other materials on record, there are sufficient materials to proceed against the accused for the offence punishable u/Sec. 138 of N.I. Act, hence, plea was recorded, read over and explained to accused in the language known to him. The accused pleaded not guilty and claimed to be tried and submitted that he has not committed any wrong, this court has, on objective satisfaction, decided to proceed with the matter as a summons case rather than a summary case. The statement of the accused as required under Sec.313 of Cr.P.C., was read over and explained to the accused in the language known to him to which he denied all the incriminating evidence found on record as false. The counsel for accused filed application under Section 145(2) of N.I Act, praying this court to allow his cross examine the PW1 and this court allow him for cross examination. The cousel for accused partly cross examined the PW1. Thereafter the accused did not attend trial from 21-12-2024 till date and all the process issued by this Court to secure presence of accused has been in vain.

6. Inspite of providing sufficient opportunity, the accused failed to place any rebuttable evidence. Therefore cross of PW.1 and defence evidence was taken as nil. Further the accused was not present before this Court and as statement of accused was already recorded and his presence not being necessary as provided under Sec. 317(1) of Cr.P.C. Therefore this Court heard arguments of counsel for complainant.

7. Having heard the rival contentions and on perusal of entire materials placed on record, the following points that would arise for determination of this court is as follows:

> **1.** Whether the Complainant has proved the guilt of the accused u/s 138 of N.I. Act beyond all reasonable doubts?
>
> **2.** What order?

8. Now, this court answers to 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

9. Point No. 1: It is pertinent to note that, in order to bring home the guilt of accused the complaint attracts Section 138 of Negotiable Instruments Act. In order to constitute an offence under Section 138 of Negotiable Instruments Act, the complainant has to fulfill the following mandatory requirements:

- **i.** The cheque should have been issued for the discharge in whole or part of any existing debt or liability.
- **ii.** Cheque should have been presented before the bank within the period of its validity and the cheque should have returned dishonoured.
- **iii.** The payee should have issued a legal notice in writing to the drawer of the cheque within 30 days from the date of dishonour.

iv. After the receipt of the notice, the drawer has failed to pay the cheque amount within 15 days.

v. On non-payment of the amount due within 15 days from the date of the receipt of the notice, the complaint should have been filed by the complainant within one month.

10. This case is tried as summons case. As this matter is tried as summons case, this court relies on the evidence recorded by learned predecessor in office. In that regard, this court relies on decision of Hon'ble Supreme Court of India in the case of ***Mehsana Nagarik Sahkari Bank Ltd., V/s Shreeji Cab Co. & Others reported in 2014(13) SCC 619.*** Wherein the Hon'ble Supreme Court had observed that de-nova hearing is necessary only when the evidence is recording in summary manner. Therefore, this court has proceeded with the case on the basis of part evidence recorded previously.

11. In order to prove his case, the complainant has examined himself as PW1. This court in view of the judgment of Hon’ble Supreme Court of India in ***Indian Bank Association and others Vs Union of India,*** **reported in 2014(5) SCC 590**, has inclined to treat the sworn statement affidavit of complainant/PW1 as his examination-in-chief, wherein he has reiterated the facts pleaded in the complaint. The PW1 has marked Ex.P1 to P5 documents in his favour.

12. The complainant has the fundamental onus to satisfy the court that the statutory requirements are complied with in order to penalize the accused. In the present case the Ex.P1 is the Cheque dated 21-09-2021 and it has been forwarded for encashment within the stipulated time period. The said cheque has been dishonoured by the payee bank on 01-11-2021. 138 of Negotiable Instruments Act, the complainant requires to make a demand for payment of the said amount within 30 days from the date of receipt of cheque as un-paid.

13. The complainant has issued an Ex.P3 legal notice to the accused on 11-11-2021 calling upon him to pay the amount within 15 days from the date of receipt of Ex.P3 notice. Which shows that the complainant demanded the accused for repayment of cheque amount by issuing legal notice within 30 days from intimation. Ex.P4 is the Postal Receipt. Ex.P5 is the Postal acknowledgement. The complainant filed the complaint on 09-12-2021, within the time stipulated period from the date of accrual of the cause of action. Hence, on a brief analysis of these materials, the complainant has discharged its initial onus. Without repeating the entire facts, let us evaluatewhetherthepresentcomplaintattractsSection138 of NI Act. Section 138 of NI Act enumerates that dishonour of cheque for insufficiency etc. It provides that whenever a cheque drawn by a person on an account maintained by him for the payment of any debt or other liability in whole or in part and such a cheque, returns unpaid due to insufficiency of funds or any other reasons then such person has committed an offence punishable under this Section.

14. The learned counsel appearing for Complainant submits that the accused has not disputed the issuance of cheque nor the signature on it. Further the accused has failed to rebut the presumption by way of strong and cogent evidence. Further he submits that the accused has issued Ex.P1 towards discharge of legally recoverable debt and has not disputed the issuance of cheque and signature on it and hence presumption under Section 139ofNIActfavoursthecomplainant.Accusedbeingnotableto rebut the presumption has committed an offence under Section 138 of NI Act.

15. In order to avail the presumption, it becomes necessary for the complainant to first establish the following three ingredients as held by the ***Honourable Apex Court of India in Rangappa versus Shri Mohan reported in (2010) 11 SCC 441*****.** In which the Honourable Apex Court has given the following ingredients which has to be fulfilled to raise the presumption in favour of the complainant those are:

1. The cheque in question must relate to the account of the accused.
2. The cheque in question must have been issued by the accused to the complainant.
3. The accused must not have denied his or her signature on the cheque.

16. In this regard it is important to note that whether the accused has denied the issuance of cheque and signature of it. From the perusal of the oral and documentary evidence available on record it is evident that the accused has not disputed the signature of the cheques. When the said cheque and signature on it were not disputed and also the cheque belongs to the account maintained by the accused, the presumption under Section 139 of NI Act favours the complainant.

17. When the signature and the issuance of cheque is admitted the initial burden which the complainant needs to prove is hereby complied with. It is on the accused to rebut the presumption contemplated under Section 139. The standard of proof for doing so is that of preponderance of probabilities. Therefore it is for the accused to raise a probable defence which creates doubt about the existence of a legally recoverable debt or liability. In order to rebut the presumption the accused need not enter the witness box, it is sufficient if he rebuts by using the materials available on record or by cross examining PW.1. Thus Section 139 imposes an evidentiary burden and not persuasive burden.

18. The accused herein has not stepped into the witness box but has chosen to rebut the presumption by depending on the materials available on record and by cross examining PW.1. After perusaloftheentiredepositionofPW-1itisclearthatthere is no dispute regarding the transaction happened between the complainant and the accused.

19. It is also the case of the complainant that accused has borrowed the said amount in the year 2021. However the accused in order to prove that he has not borrowed amount from the complainant, he has not produced any document nor was successful in eliciting useful information from the mouth of PW-1. The contention of the accused that the complainant did not have financial capacity to lend the money to the accused does not arise since there is no dispute regarding the transaction. The onus would still be on the accused to prove that the cheque was not issued in discharge of a debt or liability. The accused herein except mere suggestion has failed to rebut the presumption by way of strong and cogent evidence. It is also important to note that the accused has not replied to the legal notice which was sent to him. The accused not taking any defence through reply to the notice sent to his at the earliest point of time cannot take defence of misusing the cheque given as security at this point of time just to escape from the liability. Thus from all these documentary and oral evidence the accused has failed to rebut the presumption by way of strong and cogent evidence.

20. Thus from all these oral and documentary evidence, when the presumption is favoring the complainant by satisfying all the necessary ingredients of Section 138 of NI Act, the accused has miserably failed to rebut the presumption by way of strong and cogent evidence. As it is well settled principle of law that rebuttal presumption must be by way of strong and cogent evidence and mere suggestions does not support the accused in raising his defence. Further even though the standard of proof under Section 138 is of preponderance of probabilities the accused has failed to establish a probable defence to rebut the presumption as contemplated under Section 138 of NI

Act. Thus the defence taken by the accused were merely a story to escape from the liability. Hence the alleged liability in the present case is a legally enforceable debt or liability and the accused has issued Ex.P1 in discharge of his legally enforceable debt or liability. Hence for the aforementioned reasons I am of the opinion that the accused has committed an offence punishable under Section 138 of NI Act. Accordingly point number one which has arisen for my consideration is answered in the **affirmative.**

21. **Point No.2**: After establishing that the accused is guilty, the court must determine the quantum of compensation. The cheque amount is Rs.1,23,000/-, on going through the Ex.P1 the liability as on the date of cheque is Rs.1,23,000/-. It must be acknowledged that the transaction relates to 2021-22, and it has been two years as of the order date. Thus, the complainant was deprived of the money that was rightfully due to him for such a long period. Since the very cheque is issued towards discharge of his liability, I opine that an additional compensation of Rs.5,000/- alongside the cheque amount will suffice the delay in paying the cheque amount and this case is not feet to impose double the cheque amount. Therefore, the complainant is entitled for the compensation. In the light of above discussion, Hence for the following;

O R D E R

The complaint of the complainant under the provisions of 138 Negotiable Instruments Act is hereby allowed. Consequently;

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Acting u/Sec.255(2) of Cr.P.C., the accused is convicted for the offence punishable under section 138 of N.I act and sentenced to undergo simple imprisonment for a period of one month and pay a fine amount of Rs.1,30,000/-. In default of payment of the fine amount, the accused shall undergo simple imprisonment for a period of 3 months.

Out of the fine amount, an amount of Rs.1,28,000/-, is ordered to be paid to the complainant as compensation under the provisions of Section 357 of Cr.P.C. and the remaining fine amount of Rs.2,000/- shall be appropriated to the State expenses.

The bail bond of the accused and his surety bond are cancelled.

Office is directed to furnish free copy of the judgment to the accused.

(Dictated to the Stenographer directly on the computer, corrected by me and then pronounced in the open Court, on this the 03rd day of January 2026.)

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(Smt. Shwethakshi.)
III Addl. Civil Judge & JMFC,
Udupi.

ANNEXURE

List of witnesses examined for the complainant :-

PW1 : Prashanth Nayak

<u>List of witnesses examined for accused</u> :- None

<u>List of documents marked for the complainant</u> :-

Ex.P1	:	Cheque.
Ex.P1(a)	:	Signature of accused.
Ex.P2	:	Bank Endorsement.
Ex.P3	:	Legal notice
Ex.P4	:	Postal Receipt
Ex.P5	:	Postal Acknowledgment

<u>List of documents marked for the accused</u> :- Nil

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(Smt. Shwethakshi.)
III Addl. Civil Judge & JMFC.,
Udupi.