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IN THE COURT JUDICIAL MAGISTRATE

FIRST CLASS (III COURT),

AT MYSURU

P R E S E N T

Sri Raghu.C.J, LL.B., MBA.,

JMFC., III COURT, MYSURU

DATED THIS THE 29th DAY OF APRIL 2026

CC.No.10281/2022

COMPLAINANT : M/s.Mysuru Pranthiya Liquor Merchants Development Co-operative Society Ltd., represented by its Secretary, Sri.Ramaradhya S/o late Basavradhya, Aged about 63 years, Office No.1204/2, Tank band road, Indira Nagar, Mysuru.

(**By Sri RSA/BDM., Advocate**)

- V E R S U S -

ACCUSED : Gagan Gowda G, s/o C G Gangadhar, Aged about 24 years, R/at No.50, KHB, 3rd stage, Kuvempunagara, Mysuru-23

(**By Sri K.D.,Advocate**)

Date of complaint	06.08.2022
Date of Commencement of Evidence	13.10.2022
Date of Closing of Evidence	27.03.2026
Offences complied	Section 138 of N.I.Act
Opinion of the Judge	Accused is not found guilty

(**Raghu.C.J**),
J.M.F.C.III Court , MYSURU

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

This is a complaint filed under Section 200 of Cr.P.C. by the complainant Society against the accused for the offence punishable under Section 138 of the N.I. Act.

2. **The brief facts of the complaint is as under** : The case of the Complainant Society is that the Accused had borrowed a loan of Rs.10,00,000/- (Rupees Ten Lakhs only) from the Complainant Society in the month of February 2022 for the purpose of his liquor business, agreeing to repay the said loan amount within a period of three months. However, even after expiry of the agreed period, the Accused failed to repay the loan amount in spite of repeated requests and demands made by the Complainant Society. It is further

submitted that, towards discharge of the aforesaid legally enforceable debt and liability, the Accused issued a cheque bearing No. 000006 dated 16.06.2022 for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only), drawn on Bandhan Bank, Mysuru, in favour of the Complainant Society. It is further submitted that the Complainant Society, acting in good faith and as per the instructions of the Accused, presented the said cheque for encashment through its banker, namely The Mysore Merchants Co-operative Bank Ltd., Jaganmohana Palace Road Branch, Mysore. However, to the utter shock and surprise of the Complainant Society, the said cheque came to be dishonoured and returned unpaid with an endorsement “Funds Insufficient” dated 18.06.2022. It is submitted that the Accused had issued the aforesaid cheque knowingly and fully aware that there were insufficient funds in his account to honour the cheque, and thereby issued the same with malafide intention to deceive and defeat the legitimate claim of the Complainant Society. Hence, the act of the Accused constitutes an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It is further submitted that the Complainant Society, through its counsel, caused a legal notice dated 23.06.2022 to be issued to the Accused by Registered Post Acknowledgment Due (RPAD), calling upon him to pay the cheque amount within the statutory period prescribed under law. The said notice was duly served upon the Accused. However, instead of complying with the demand made therein, the Accused issued an untenable and evasive reply dated 12.07.2022 and failed to make payment of the cheque amount within the stipulated period. The complainant is further contended that even though the accused did not have sufficient funds in his account, with the intention of deceiving the complainant the said cheque has been issued to the complainant with the malicious intention of getting money. Wherefore the complainant most respectfully prays that this Hon'ble Court may be pleased to take cognizance for the offense punishable under Section 138 of Negotiable

Instrument Act and punish him with imprisonment and fine as provided under law.

3. After receiving the complaint, this court has scrutinized the documents and then took cognizance of the offence punishable under Section 138 of Negotiable Instruments Act and ordered for registration of the compliant. As there were sufficient materials to constitute the offence, this court proceeded to pass an order for issuing process against the accused.

4. On finding a prima-facie case against the accused, he was summoned. Consequent to the service of summons, accused has appeared through his counsel and offered bail. Then the substance of accusation was read over to the accused in the language known to him. Accused pleaded not guilty and claimed to be tried and further submits that, **the cheque is handed-over as security for the previous loan which was settled**. **However, complainant has misused the cheque**. Considering his defence this case is tried as summons case. On filing of

application u/sec.145(2) of N.I.Act, the case is reopened for cross–examination of PW1, the accused counsel cross–examined PW1 in length, Further, examination of accused under Section 313 of Cr.P.C was recorded, wherein he has denied the incriminatory evidence as false and submitted he would lead defence evidence. Further, Even provided an opportunity and adjournments accused has not come–forward to lead any defence evidence, hence, defence evidence was taken as NIL and case proceeded to arguments.

5. In order to prove the case of the complainant Society, the Secretary of the complainant society/Ramaradhya examined himself as PW.1 and got marked Ex.P.1 to 10 and closed his side. Accused not led any defence evidence.

6. Heard the arguments of both the sides. Perused the oral and documentary evidence available on record, the following points would arise for my consideration :

1. Whether the complainant Society proves that the

accused has issued cheque at Ex.P.1 towards the legally enforceable debt and guilt of the accused for the offence punishable under section 138 of N.I.Act?

2. What order?

7. My findings on the above point are :

Point No.1: In the Negative

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

REASONS

8. **Point No. 1 :** It is the case of the complainant that, accused borrowed a sum of Rs.10,00,000/- from the complainant Society and for repayment of said loan amount , he has issued a cheque as per Ex.P.1. On presentation of the same, it was dishonoured and cheque returned with an endorsement as "funds insufficient" dated 18.06.2022.

9. In the affidavit filed along with the compliant, the complainant company has reiterated its case about lending of money to the accused and also about the accused issuing

cheque towards repayment of legally enforceable debt. When the testimony of the complainant and supporting documents like Ex.P.1 to Ex.P3 are looked into, it appears that the accused has issued cheque in discharge of his legally enforceable debt and when the same was presented, it was not honored as “funds insufficient”. Ex.P.4 is the demand notice which was issued by the complainant to accused, in compliance with statutory requirement under section 138 of Negotiable instrument act, calling upon the accused to repay the cheque amount. When Ex.P.5 and Ex.P6 are looked into, the demand notice was duly served on accused. Ex.P7 is reply notice given by the accused dated 29.05.2023. Ex.P8 is Authorization letter issued in favour of B. Ramarathia to represent the complainant society , Ex.P9 is Loan application form and Ex.P10 is Audit report of the complainant society for the year 2022-23.

10. On perusal of the documents relied by the complainant goes to show that, statutory requirements of Section 138 of N.I. Act is complied with. The presumption in

favour of the holder of the cheque under N.I.Act, that he has received the same for discharge in whole or in part of any debt or liability. **However, it is settled principle of law that the presumption available under Section 139 NI Act can be rebutted by the accused by raising a probable defence**.

11. According to the complainant the cheque was dishonored as per endorsement of the bank dated 18.06.2022. The complainant society got issued notice on 23.06.2022. However the accused has not made any sort of payment. As such the complainant has presented this complaint. Section 138 of NI Act it is also been provided that, it shall be presumed that unless the contrary is proved, that the holder of such cheque received the cheque in the discharge of a liability. The burden is upon on the accused to rebut the aforesaid presumption.

12. **The learned counsel for the complainant has vehemently argued as follows**:

1) the complainant society has successfully established the transaction and the liability of

the accused persons. The Leelavathi is the mother of Gagangouda and Harshit Gouda, and all of them had availed separate loans of Rs.10,00,000/- each from the complainant society for the purpose of business development.

2) Issuance of the cheque and the signatures found thereon are not in dispute. Once the execution of the cheque is admitted, the statutory presumption under law arises in favour of the complainant regarding the existence of legally enforceable debt.

3) Though the accused, in their reply notice, have taken a contention that the loan amount has already been repaid, no such defence has been suggested to P.W.1 during the course of cross-examination. This omission, according to the complainant, is fatal and creates serious doubt regarding the genuineness of the defence.

4) Further, no documentary evidence such as receipts, account statements, or acknowledgments has been produced by the accused to substantiate the alleged repayment.

5) It is also argued that the contention of the accused that the cheque was issued only as a “security” is not supported by any material evidence. The accused have neither initiated any legal action nor lodged any complaint against the complainant society alleging misuse of the cheque. Such inaction, according to the

complainant, weakens the defence set up by the accused.

6) With regard to the allegation of personal grudge, the former director of the complainant society, had disputes with the society and defamatory statements were made against him. However, no evidence, such as publications, complaints, or independent material, has been placed on record to substantiate these allegations.

7) It is also emphasized that Ex.P9 and P10, namely the audit report and account extracts of the complainant society, have not been disputed or challenged by the accused. The accused have also not stepped into the witness box nor adduced any defence evidence to probabilize their case.

8) Though P.W.1 has admitted that there were minor deviations in following the by-laws while sanctioning the loan, it is contended that such deviations do not extinguish the legally enforceable liability of the accused and cannot be a ground for acquittal.

In view of the above circumstances, the learned counsel for the complainant submits that the complainant has proved the existence of legally recoverable debt and the issuance of cheque. Hence, Prays to convict the accused and sought compensation be awarded in accordance with law.

13. **The learned counsel for the accused vehemently argued as follows**:

1) The entire case of the complainant society is false, inconsistent, and legally unsustainable. The complaint filed by the complainant society, the date of advancement of loan is not mentioned, which is a material omission. Further, the oral evidence of PW.1 is contrary to the documentary evidence, thereby rendering the complainant's case doubtful.

2) The PW.1, Mr.Ramaradhya, who claims to be the representative of the complainant society, has no legal authority to depose on behalf of the society. He has neither produced any authorization of the board nor obtained permission of the Court to represent the complainant. Hence, his evidence is inadmissible and cannot be relied upon.

3) The learned counsel also submits that the complainant society has failed to produce any Board Resolution authorizing initiation of proceedings against the accused person. Being a registered society, any decision to prosecute must be taken by the Board of Directors. However, No resolution declaring the accused as defaulters is produced. No document authorizing filing of the complaint is placed on record. Therefore, the present complaint

is not an act of the society but appears to be an individual and motivated action of the office bearers, allegedly in collusion, to harass the accused and defame their family, particularly one Mr. Gangadhar.

4) The complainant has violated its own by-laws, which is admitted in cross-examination. The alleged loan transaction is contrary to prescribed procedure, thereby making the very transaction illegal and doubtful.

5) The audit reports produced are manual and unsupported by statutory records such as income tax returns, Exhibit P9 (loan application) contains visible alterations effected by use of whitener, including overwriting of the date and amount. The said corrections clearly indicate that the document has been tampered with and appears to be fabricated, not relating to the present transaction. It is further submitted that, on Page No.1 of Exhibit P9, there are apparent corrections with respect to the loan amount as well as the year, wherein the original entries appear to have been overwritten by using whitener, and the year has been altered from 2021 to 2022. Further, on Page No.2 (or Page No.3 as per pagination), the document prima facie discloses that a loan of ₹5,00,000/- was allegedly obtained by the Accused on 18.01.2021, which is stated to have been already repaid. This circumstance clearly indicates that only a loan of ₹5,00,000/- was earlier availed and the same has been discharged. In light of the

above discrepancies, it is submitted that Exhibit P9 appears to be a concocted, materially altered, and subsequently created document, prepared solely for the purpose of the present case.

6) The accused have specifically taken a defence of repayment, and in support thereof, Produced receipts and memo showing payment of Rs.5,15,113/- on 15.01.2022. This substantiates that earlier transactions were settled and supports the defence that the cheque was misused.

7) The complainant's version that such huge amounts Rs.10 lakhs was advanced in cash is inherently improbable. Such transaction is against normal financial practice, Violate the society's own by-laws which prohibit cash transactions.

8) Further, as per the by-laws, action against defaulters can be initiated only after the lapse of the prescribed period of default. However, the present complaint has been filed prematurely, without complying with such mandatory requirements, rendering it not maintainable.

In light of these material contradictions, procedural lapses, and probable defense, the complainant has failed to establish a legally enforceable debt. On the contrary, the accused have raised a probable and credible defence.

Therefore, prays to Acquit the accused and Dismiss the complaint with exemplary costs.

14. Upon careful consideration of the rival submissions, oral testimony of PW.1, and the documentary evidence available on record, this Court is of the considered view that the accused is entitled to be acquitted. It is an undisputed fact that the issuance of cheque and the signature thereon are not denied by the accused. However, it is well settled that such admission only gives rise to a rebuttable presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881, and the burden thereafter shifts upon the accused to rebut the said presumption on the touchstone of preponderance of probabilities, and not beyond reasonable doubt.

15. In the present case, the complainant has failed to establish the foundational facts of the alleged loan transaction with clarity and consistency. The complaint does not clearly disclose the specific date of advancement of the loan, which is a material circumstance. Further, the oral

evidence of PW.1 is found to be inconsistent with the documentary evidence produced on record, thereby creating serious doubt regarding the genuineness of the alleged transaction.

16. PW.1, who claims to represent the complainant Society, has not produced any valid authorization such as a Board Resolution or other competent authorization to institute and prosecute the present complaint. In the absence of such authorization, the very competency of PW.1 to depose on behalf of the Society becomes doubtful, and his evidence cannot be safely relied upon.

17. It is also pertinent to note that the complainant Society, being a registered body, is expected to act strictly in accordance with its bye–laws and through its duly constituted governing body. However, no Board Resolution authorizing initiation of proceedings against the accused has been produced. This creates a serious doubt as to whether the complaint has been instituted by the Society in its

collective capacity or whether it is an individual act of certain office bearers, as contended by the defence.

18. Further, PW.1 has admitted deviations from the bye-laws of the Society in respect of financial transactions. The defence has specifically brought out that loans were allegedly advanced in cash in contravention of the bye-laws, that prescribed procedures for declaring defaulters were not followed, and that proceedings were initiated prematurely without adhering to the mandatory waiting period. These admitted violations go to the root of the transaction and materially affect the credibility of the alleged loan claim.

19. If such violations of internal bye-laws are ignored and accepted, it would amount to permitting the Society to act dehors its own rules and regulations. The bye-laws are intended to regulate the financial discipline and functioning of the Society, and any deviation therefrom cannot be lightly condoned. Therefore, the procedural irregularities and violations committed by the complainant

Society cannot be brushed aside and cannot enure to the benefit of the complainant. Ex.P9 (loan application) also suffers from serious infirmities. The document contains visible alterations made using whitener, including overwriting of the year and amount. Such corrections create a strong suspicion that the document has been tampered with and lacks authenticity. The said document, therefore, does not inspire confidence and cannot be relied upon as a true record of the alleged transaction.

20. Further, the accused has produced material evidence in the form of repayment receipts evidencing payment of Rs.5,15,113/- on 15.01.2022. This supports the defence that earlier loan transactions existed between the parties and the same had already been repaid. This circumstance lends credence to the defence version that the cheque in question was issued in connection with an earlier transaction and has been subsequently misused.

21. Importantly, the defence taken by the accused at the earliest point of time in the reply notice, reiterated

during the recording of plea, and further fortified through suggestions put to PW.1 during cross–examination, is consistent and mutually corroborative. The accused has consistently contended that the cheque in question was issued as security in respect of an earlier transaction and has been misused by the complainant Society.

22. In view of the above circumstances, this Court is of the opinion that the accused has successfully raised a probable and plausible defence sufficient to rebut the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act. Once such presumption stands rebutted, the burden shifts back to the complainant to prove the existence of a legally enforceable debt beyond reasonable doubt, which the complainant has failed to discharge. Consequently, it cannot be held that the cheque at Ex.P1 was issued towards discharge of a legally enforceable debt or liability so as to attract the penal provisions under Section 138 of the Negotiable Instruments Act. Accordingly, the accused is entitled to be acquitted of

the offence punishable under Section 138 of the Negotiable Instruments Act.

23. In this regard, this court relied upon the decision of the Hon'ble Apex Court, in the case of **Rangappa Vs Mohan reported in AIR 2010 SC 1898,** held that; presumption available under Section 139 of Negotiable Instrument Act is not a conclusive proof, but the said presumption is rebuttable one. The accused has to rebut the presumption which is available and favourable to the complainant. It is open to the accused to raise the defence wherein the existence of legally enforceable debt or liability can be contested. For rebutting the presumption, accused need not adduce evidence with unduly high standard of proof, but the standard of proof for doing so with that of preponderance of probabilities. If the accused is able to raise a probable defence which creates doubt about the existence of legally enforceable debt or liability, the onus shifts back on the complainant. It is also held that, for rebutting the presumption accused can rely on the materials

submitted by the complainant or his cross–examination and he need not necessarily adduce evidence in all cases.

24. In view of the defence taken by the accused in the reply notice and during cross–examination, and having regard to the contradictions and inconsistencies found in the oral and documentary evidence of the complainant and considering the admissions elicited during cross–examination, the documentary evidence produced by the accused, this Court is of the considered opinion that the accused has successfully raised a probable defence and rebutted the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act by preponderance of probabaility. Per contra, the complainant has failed to prove beyond reasonable doubt that the cheque at Ex.P1 was issued towards discharge of a legally enforceable debt or liability. Accordingly, the cheque at Ex.P1 does not attract the penal provisions of Section 138 of the Negotiable Instruments Act. The accused is entitled to the benefit of

doubt and consequently deserves to be acquitted. Accordingly, this court answer **point No.1 in the Negative.**

25. **Point No.2** : For the foregoing reasons stated in the point No.1, this court proceeds to pass the following:

O R D E R

The accused found not guilty for the offence punishable under section 138 of Negotiable Instruments Act.

Acting under section 255 (1) of Cr.P.C, the accused is acquitted for the offence punishable under section 138 of The Negotiable Instruments Act.

In view of the Provision U/Sec. 437-A of Cr.P.C., bail bond and surety bond stands extended till completion of appeal period.

(Dictated to the Stenographer directly, typed by her into computer, revised and corrected by me and signed, pronounced in the Open Court on this the 29th day of April 2026).

(RAGHU.C.J)
JMFC III COURT, MYSURU

A N N E X U R E

LIST OF WITNESSES EXAMINED FOR COMPLAINANT:

PW.1 Ramaradhya

LIST OF DOCUMENTS MARKED FOR COMPLAINANT:

Ex.P.1	Original cheque
Ex.P.2 and P.3	Bank return memos
Ex.P.4	Office copy of legal notice
Ex.P.5	Postal receipt
Ex.P.6	Postal Acknowledgment
Ex.P.7	Reply notice
Ex.P.8	Authorization letter
Ex.P.9	Loan application
Ex.P.10	Audit report of the complainant society

LIST OF WITNESSES EXAMINED FOR ACCUSED:

NIL

LIST OF DOCUMENTS MARKED FOR ACCUSED :

NIL

(RAGHU.C.J)
JMFC III COURT, MYSURU