

KA14020018162025



**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE
& J.M.F.C., AT SHIVAMOGGA.**

Dated: 1st Day of July 2026.

**-: Present :- Smt. Deepa, M.A, L.L.B
II Addl. Senior Civil Judge & J.M.F.C,
Shivamogga**

CRIMINAL CASE No.812/2025

Complainant : Sri Nandisha Kumar H.B. S/o
Basavarajappa, Aged about 33
years, Agriculturist and
businessman R/o Hosakoppa
village, Hosahalli post,
Shivamogga Taluk-577202.

(By Sri. KV/CGN, Adv.)

-Vs-

Accused : Sri Mahesha B. S/o
Basavarajappa, Aged about 33
years, Businessman, R/o
Mullakere, Gajanur Post,
Shivamogga Taluk.

(By Sri. K.S.V., Adv.)

-::JUDGMENT::-

This case has been registered against the accused on the basis of the complaint filed by the complainant U/Sec. 200 of Cr.P.C. for the offence punishable U/s 138 of N.I.Act.

2. In brief it is the case of the complainant that:-

a. The accused is well known to the complainant since several years as they are friends. As per their good relationship with the complainant the accused approached the complainant for hand loan and borrowed a sum of Rs.5,00,000/- from the complainant on the end of June 2023 to meet his urgent business and his domestic purpose and also agreed to repay the said amount in the end of August 2023.

b. It is further submitted that, he was reminding the accused about his obligation of returning the borrowed amount as early as possible. In spite of repeated demands and requests, the accused had issued the cheque on **15.09.2023** bearing **No.000788** for a sum of **Rs.5,00,000/-**

drawn on **ICICI Bank, Panje Mangesh Rao Road, Mangalore** in favour of the complainant. The complainant had presented the said cheque for collection through his banker IndusInd Bank Ltd., Nehru Road, Shivamogga Branch for collection. But the said cheque has been returned unpaid with a memo dated 27.10.2023 stating the reason **"Account Closed"**.

c. It is further submitted that, After the receipt of the dishonoured cheque, the complainant had got issued the legal notice to the accused on 16.11.2023 calling upon the accused to repay the cheque amount within 15 days from the date of receipt of the legal notice. The said legal notice has returned with shara stating that 'Party Refused so returned to sender' dated 20.11.2023 and the same was received by the counsel of the complainant is on 22.11.2023. The accused has not replied and not complied to said notice. Thereby the accused has committed an offence punishable U/sec.138 of N.I. Act and he is liable to be punished in accordance with law. Hence, prays to convict the accused accordingly.

3. After the presentation of the complaint, cognizance for the offence punishable under Sec.138 of N.I.Act was taken, sworn statement of the complainant was recorded and after perusal of the complaint, sworn statement and the relevant documents and upon prima-facie case made out by the complainant, case was registered and process was issued against the accused and in pursuance of the said process, the accused has appeared and enlarged on bail. Thereafter, plea of the accusation was recorded wherein he pleaded not guilty and claimed to be tried.

4. In order to prove his case, the complainant filed his affidavit and examined as P.W.-1 and got marked Ex.P.1 to Ex.P.5. Thereafter, the statement of the accused as required U/s 313 of the Code of Criminal Procedure was recorded wherein, the accused denied the incriminating evidence appearing against him and not choose to lead defense evidence. In the mean while, the accused compromised the case with complainant and filed joint memo on 10.03.2026 agreeing his liability for Rs.1,40,000/- and on same day, he

has paid Rs.20,000/- to the accused and further agreed to pay the remaining amount of Rs.1,20,000/- within in one year on monthly installment basis. On 09.04.2026 the accused has paid Rs.10,000/- to the complainant as agreed by him. Later, he neither appeared nor complied the terms of joint memo. Hence, case is posted for arguments.

5. I have heard both Counsel.

6. After perusal of the records of the case, the following points would arise for my consideration are:-

-:: POINTS ::-

POINT NO: 1 : Whether the complainant proves that the accused has issued cheque Ex.P.1 and the same was returned with a shara that **“Account Closed”** to complainant and in spite of receiving statutory notice the accused has failed to make payment of the cheque within the statutory period and thereby committed an offence punishable under sec 138 of the Negotiable Instruments Act?

POINT NO :2 : What Order?

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

Point No : 1 : In the Affirmative

**Point No : 2 : As per the final order
for the following:-**

: REASONS ::

8. Point No.1: It is the specific case of the complainant that, The accused had borrowed a sum of Rs.5,00,000/- under loan amount and he had committed default in the matter of repayment of the said loan. Further on repeated demands made by the complainant, the accused issued a **cheque bearing No.000788** dated 15.09.2023 of ICICI Bank, Panje Mangesh Rao Road, Mangalore for Rs.5,00,000/- due to the complainant from the accused. When the complainant presented the said cheque for collection through its banker, the same was dishonored for want of funds in the account of the accused with an endorsement "Account Closed" as per memo dated 27.10.2023 of IndusInd Bank Ltd., Nehru Road, Shivamogga. In spite of service of legal notice, the accused failed to repay the amount.

9. Ex.P1 is the cheque bearing No.000788 dated 15.09.2023 of ICICI Bank, Panje Mangesh Rao Road, Mangalore for Rs.5,00,000/- given by the accused to complainant, Ex.P.1(a) is the signature, Ex.P2 Bank memo, Ex.P3 is the Legal notice, Ex.P.4 is the postal receipt and Ex.P5 is the un-served postal cover and Ex.P.5(a) is the copy of legal notice.

10. When the case is posted for cross of PW.1, the accused settled the case for Rs.1,40,000/- with complainant and filed joint memo dated 10.03.2026 by admitting his liability. On that day, he has paid Rs.20,000/- as part payment and agreed to pay the remaining amount of Rs.1,20,000/- within one year on monthly installments without fail. The Order sheet further reveals that, on 09.04.2026 the accused paid Rs.1,20,000/- to the complainant. Later he neither appeared nor complied the terms of joint memo. Since, the accused agreed his liability, the terms and conditions of joint memo shall forms the part and parcel of this judgment. The conduct of the

accused clearly shows that, he intends to defraud the complainant.

11. In view of the above settlement and having considered the facts and circumstances of the case, I am of the view that, there is no necessity to record further evidence of parties or to conduct a fulfilled trail in order to decide the controversy between the parties. **Therefore I answered point No.1 in the Affirmative.**

12. Point No.2: In view of above said reasons and having report to the admission of guilt by the accused to the extent of amount of Rs.1,40,000/- and further having regard to the fact that, the accused has already paid Rs.30,000/- to complainant out of the agreed amount of Rs.1,40,000/-, I proceed to pass following

∴ ORDER ∴

Acting under section 255(2)
of Cr.P.C., the accused is
hereby convicted for the
offence punishable Under

Sec.138 of the Negotiable Instruments Act.

Accused is sentenced to pay a fine amount of Rs.1,15,000/- and in default to pay fine amount, accused shall undergo Simple Imprisonment for the period of six months.

If the entire fine amount is recovered from the accused, Rs. 1,10,000/- shall be payable to the complainant as compensation U/s 357(1) of Cr.P.C., and Rs.5,000/- to the state.

The bail bond of the accused stands cancelled.

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

(Dictated to the stenographer directly to the computer, typed by her, and corrected by me and pronounced in open court on this dated **1st day of July 2026**)

(SMT. DEEPA)
II Addl. Sr.Civil Judge &
J.M.F.C,Shivamogga.

ANNEXURE**1. Witnesses examined on behalf of complainant :-**

P.W.1 : Nandeesh Kumar H.B.

2. Documents exhibited on behalf of complainant :-

Ex.P.1 : Cheque dated 15.09.2023

Ex.P.1(a) : Signature

Ex.P.2 : Bank endorsement

Ex.P.3 : Legal notice dt:16.11.2023

Ex.P.4 : Postal receipt

Ex.P.5 : Unserved postal cover

Ex.P.5(a) : Copy of legal notice dated 16.11.2023

3. Witnesses examined on behalf of Accused :-

- NIL-

4. List of witnesses and documents on Defense side : -

- NIL-

(SMT.DEEPA)
II Addl.Sr. Civil Judge &
J.M.F.C,Shivamogga.

**Judgment pronounced in
open court(vide separate judgment)**

ORDER

Acting under section 255(2) of Cr.P.C., the accused is hereby convicted for the offence punishable Under Sec.138 of the Negotiable Instruments Act.

Accused is sentenced to pay a fine amount of Rs.1,15,000/- and in default to

pay fine amount, accused shall undergo Simple Imprisonment for the period of six months.

If the entire fine amount is recovered from the accused, Rs. 1,10,000/- shall be payable to the complainant as compensation U/s 357(1) of Cr.P.C., and Rs.5,000/- to the state.

The bail bond of the accused stands cancelled.

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

**II. Addl. Sr. CJ & JMFC.,
Shivamogga.**