IN THE COURT OF THE IV ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS :: NELLORE

Present: **Ms. Nishad Naaz Shaik**,
IV Addl. Judl. Magistrate of First Class, Nellore.
***

Wednesday, this the 05th day of August, 2026

C.C.No.1897/2023

Kummari Rama Murthy
S/o.K.Venkataiah
Aged about 48 years
R/o.Iragalamma Sangam
Nellore
SPSR Nellore District ... Complainant

Vs.

Mudamanchu Amaravathi
D/o.Srinivasulu
Aged about 27 years
R/o.D.No.24-1-628(old)
24-1-66 (new)
Upstairs, Iragalamma Gudi Gate Center
Mulapet
Nellore -3 … Accused

This case is coming on 22.07.2026 for final hearing before this Court in the presence of **Sri S.Anand Babu,** Learned Advocate for the Complainant and of **Sri M.Sundaraiah Yadav**, Learned Advocate for the Accused, upon hearing on both sides and the matter having stood over for consideration till this day, this Court delivered the following:-

:: JUDGMENT ::

1. This is a complaint filed by the complainant under Section 200 of Cr.P.C. against the accused for the offence punishable under Section 138 read with 142 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act' for short).

2. ***The brief facts of the complaint are:*** The case of the complainant is that the accused borrowed a sum of Rs.3,00,000/- from the complainant on 04.12.2021 for her personal necessities and, in acknowledgment of the said debt, executed a promissory note in favour of the complainant agreeing to repay the amount with interest at the rate of 24% per annum. It is alleged that despite repeated demands made by the complainant, the accused failed to discharge the said liability. Subsequently, towards part payment of the amount due under the promissory note, the accused issued Cheque No.000011 dated 15.07.2023 for a sum of Rs.3,00,000/-, drawn on Kotak Mahindra Bank, Brindavanam Branch, Nellore, in favour of the complainant. The complainant presented the said cheque through Union Bank of India, Mulapet Branch, Nellore, on 02.08.2023 for collection. However, the cheque was dishonoured and returned unpaid on 03.08.2023 with the endorsement "Drawer's Signature Differs." It is further alleged that even after the dishonour of the cheque, the accused assured the complainant that the cheque would be honoured on presentation, but failed to make payment. The complainant thereafter made repeated demands requesting the accused to repay the cheque amount, but the accused failed to comply. Thereafter, the complainant caused a statutory legal notice dated 05.08.2023 to be issued to the accused at her residential and workplace addresses, calling upon her to pay the cheque amount within the statutory period. The said notice was served on the accused on 07.08.2023. Despite receipt of the legal notice, the accused neither paid the cheque amount nor sent any reply. According to the complainant, the

accused, with a dishonest intention to evade repayment of the legally enforceable debt, deliberately issued the cheque with a different signature and thereby caused its dishonour. As the accused failed to comply with the demand made in the statutory notice, the complainant filed the present complaint seeking punishment of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. Hence the Complaint.

3. On the strength of the sworn statement and documents of the complainant, the complaint is taken on file by the Court under Section 138 r/w 142 of N.I Act against the accused.

4. On appearance of the accused, copies of relevant case records were furnished to her as required under Section 207 of Cr.P.C.

5. The accused is examined under Section 251 Cr.P.C., explained the substance of accusation leveled against her under Section 138 r/w 142 of N.I. Act in Telugu, for which she denied the offence and claimed to be tried by pleading not guilty.

6. During the course of trial, the complainant himself examined as PW1 and got marked Exs.P1 to Ex.P5 on behalf of the complainant.

7. After completion of the complainant side evidence, the accused was examined under Section 313 Cr.P.C., by read over the incriminating evidence to the accused in Telugu language, for which she denied and requested time for defence evidence. In support of her defence, the accused examined herself as DW.1. No documents were marked on behalf of the defence.

8. Heard both sides. Perused material available on record and also the counsel for the complaint submitted the pleadings, evidence and contents of documents. The learned counsel for the complainant contended that the accused admittedly signed Ex.P1 cheque and that the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the complainant. It is further contended that the accused failed to rebut the statutory presumption and that the evidence of DW.1 is not sufficient to probabilise her defence.

Per contra, the learned counsel for the accused filed written arguments contended that Ex.P5 promissory note is not proved. It is argued that PW.1 himself admitted that he did not witness the accused signing the promissory note and that of the attestor who is known person to the complainant was not examined before the Court. It is further contended that the complainant has taken inconsistent stands regarding the transaction and that the cheque was allegedly misused after being taken from the handbag of the accused. The learned counsel for accused also relied upon the following decisions and prayed for acquittal.

In **K. Krishna Reddy v. K. Rajendra and another**, **2012 (1) ALD (Crl.) 934 (A.P.)**, Hon'ble High Court held that the complainant must establish the foundational facts relating to the transaction, including the source of funds and the circumstances under which the cheque came to be issued, particularly when the accused raises a probable defence disputing the alleged debt or liability.

In **John K. Abraham v. Simon C. Abraham and another**, **(2014) 2 SCC 236**, the Hon'ble Supreme Court held that, before drawing the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, the complainant must prove the basic facts of the transaction. Where the complainant fails to establish his financial capacity to advance the alleged loan or the circumstances under which the loan was advanced, the accused is entitled to the benefit of doubt.

In **M.J. Joseph v. Gladis Sasi**, **2010 (3) KLT 379 (Ker.)**, Hon’ble High Court held that where the accused specifically disputes the existence of a legally enforceable debt, the complainant is required to adduce satisfactory evidence regarding the transaction and his financial capacity to advance the amount, failing which the statutory presumption stands rebutted.

9. **Now the points that arise for determination are:-**

i) **Whether there existed any legally enforceable debt or liability between the complainant and accused?**
ii) **Whether the accused issued cheque for discharge of such legally enforceable debt or liability?**
iii) **Whether the accused is able to rebut the evidence of complainant? If so, to what extent ?**
iv) **Whether the complainant has proved the guilt of the accused for the offence punishable under Section 138 of N.I. Act beyond all reasonable doubt ?**

POINTS (i) to (iv), answering together :

10. Since the above Points are inter-related to each other, this Court is inclined to discuss the same together.

(i) To prove his case, the complainant examined himself as PW.1 and, in his chief-examination affidavit, reiterated the averments made in the complaint. During the course of his evidence, Exs.P1 to P5 were marked. Ex.P1 is the cheque, Ex.P2 is the cheque return memo, Ex.P3 is the legal notice, Ex.P4 is the postal acknowledgment, and Ex.P5 is the promissory note.

In his cross-examination PW.1 admitted that he is doing coolie work and also doing real estate business. He further admitted that the accused is unmarried as on the date of warrant and that the parents of the accused are alive. He admitted that the purpose for borrowing the amount was not mentioned in the promissory note. He further admitted that the written promissory note was brought by the accused and that one of the attestors to the promissory note is the mother of the accused, who had signed the same prior to coming to his house. PW.1 further admitted that he does not know who had written the promissory note and that he had not seen the accused and her mother signing the promissory note. He admitted that a complaint was given by the father of the accused to the Superintendent of Police alleging that he had collected huge amounts towards interest and that, in connection with the said complaint, he was called to the I Town Police Station. He also admitted that the matter was referred by the Superintendent of Police to the I Town Police Station. PW.1 further admitted that the cheque was written by the accused and that the accused had issued a reply notice to the legal notice. He also admitted that he does not remember the date of the legal notice.

(iii) In support of her defence, the accused examined herself as DW.1. No documents were marked on behalf of the defence.

In her chief-examination, DW.1 deposed that the complainant was known to her and used to come to their house since 2018 for collecting daily amounts as he was doing Tandala business. She further deposed that her father had borrowed an amount of ₹1,50,000/- from the complainant in the year 2018 and that he had repaid an amount of ₹2,70,000/- towards principal and interest. She further deposed that on 23.07.2023, the complainant along with some other persons came to her house, demanded additional amounts towards interest, and created a quarrel. At that time, she was working as a volunteer. She deposed that during the said incident, the complainant and others took away her hand bag containing her cheque book. She further deposed that on 24.07.2023, she submitted a report before Spandana and, based on the said report bearing No.2115/2023, the I Town Police called her and the complainant to the police station, where the complainant was admonished and instructed not to repeat such acts. She further deposed that thereafter the complainant filed the present false case by misusing the cheques which were allegedly found in her bag. She stated that she received the legal notice issued by the complainant and issued a reply notice. She deposed that the contents of the cheque were not written by her and that she had only signed the cheque on the front side and kept it in her bag, which was misused by the complainant. She further deposed that she never executed any promissory note in favour of the complainant, that the signature appearing on the promissory note does not belong to her, and that she never borrowed any amount from the complainant.

In Cross-examination, DW.1 admitted that her father is a mason and that she does not know for what purpose her father borrowed the amount. She further admitted that she and her father are residing in the same house and at the time of the alleged borrowal by her father, she was studying MCA final year and was also working as a volunteer. DW.1 further deposed that after completion of the debt, the complainant had taken the pocket book relating to the Tandala business. She deposed that she could examine her father as a witness on her behalf. She deposed that she and her father initially gave a report before Spandana on 24.07.2023 and that, after two days, the I Town Police called her over phone, pursuant to which she and her father went to the police station. She deposed that she had not filed the Spandana report before the Court and that she had not mentioned the cheque numbers in the said report. She further deposed that she only mentioned in the report that the cheque book was missing. She admitted that she had not given any written complaint to the bank for stopping payment of the cheque and that she gave only an oral complaint to the bank after presentation of the cheque. She also admitted that her elder sister's marriage was performed in the year 2018. She further deposed that on the date of presentation of the cheque there is no balance in her account. DW.1 further deposed that the signature on the front side of the cheque belongs to her and she do not know that the reply notice was given after registering the complaint by this court.

(iv)Thereafter, the accused filed a petition seeking expert opinion regarding the signatures appearing on Ex.P1 cheque and Ex.P5 promissory note. The said petition was allowed. However, the Forensic Science Laboratory sought contemporaneous admitted signatures of the accused for comparison. Despite several opportunities granted by this Court, the accused failed to furnish the required admitted signatures and ultimately filed a memo expressing her inability to produce the same. Consequently, the proceedings relating to expert opinion were closed.

11. Before appreciating the evidences and arguments of both the parties, it would be appropriate to refer to the basic ingredients of Section 138 of N.I. Act, which are as follows:-

a) The accused issued the cheque on an account maintained by them with a Bank.

b) The said cheque had been issued in discharge, in whole or in part, of any legal debt or other liability. Explanation. - For the purposes of this section, "debt or other liability" means a “legally enforceable debt or other liability."

c) The said cheque had been presented to the Bank within the period of its validity i.e. 3 months now (previously 6 months).

d) The aforesaid cheque when presented for encashment, was returned unpaid/dishonoured 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.

e) The Payee of the cheque issued a legal notice of demand within 30 days from the receipt of information by him from the Bank regarding the return of the cheque.

f) The Drawer of the cheque fails to make the payment within 15 days on the receipt of aforesaid legal notice of demand. So it is clear that the drawer of a cheque shall be deemed to have committed an offence punishable under Sec. 138 of N.I. Act only when the aforesaid ingredients are satisfied. So, it is clear that the drawer of a cheque shall be deemed to have committed an offence punishable u/s.138 of N.I. Act only when the aforesaid ingredients are satisfied.

12. Now, this Court would like to consider: Whether the complainant proves beyond reasonable doubt that the accused issued Ex.P1 cheque for ₹3,00,000/- towards discharge of a legally enforceable debt or liability and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act?

13. **<u>Discussion and Appreciation of Evidence:</u>** There is no dispute regarding the fact that Ex.P1 cheque belongs to the account of the accused. During her evidence, DW.1 admitted that the signature appearing on the front side of Ex.P1 cheque belongs to her. Thus, the execution of the signature on the cheque stands admitted.

(i) Once the signature on the cheque is admitted, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act come into operation in favour of the complainant. The burden then shifts upon the accused to rebut the said presumptions by raising a probable defence.

(ii) The principal defence of the accused is that the complainant was carrying on "thandala" business and that her father had borrowed money from the complainant in the year 2018. According to her, the entire amount was repaid and during a quarrel which allegedly took place on 23.07.2023, the complainant took away her handbag containing a cheque book and subsequently misused the signed cheque.

(iii) However, except the interested testimony of DW.1, there is absolutely no material placed before the Court to substantiate the said defence. Though DW.1 repeatedly referred to a complaint allegedly submitted through Spandana and to police intervention, she admittedly failed to produce the said complaint before the Court. She also admitted during cross-examination that she had not mentioned the cheque number in the alleged complaint and that she only stated that the cheque book was missing.

(iv) Significantly, DW.1 admitted that she did not issue any stop-payment instructions to the bank after the alleged loss of the cheque. If really the signed cheque had been taken away by the complainant as alleged, the normal conduct expected from a prudent person would be to immediately intimate the bank and seek stop-payment instructions. Admittedly, no such action was taken by the accused.

(v) DW.1 further admitted that the front side signature on Ex.P1 cheque belongs to her. She also admitted that on the date of presentation of the cheque there was no sufficient balance in her account. These admissions materially weaken the defence version.

(vi) The accused also disputed the execution of Ex.P5 promissory note. It is true that PW.1 admitted that he had not actually seen the accused and her mother signing Ex.P5. It is also true that one of the attesting witnesses was not examined. However, it is well settled that in a prosecution under Section 138 of the Negotiable Instruments Act, the foundation of liability is the cheque itself and not the promissory note. Once the execution of the cheque and signature thereon are admitted, the statutory presumption regarding consideration comes into play.

a) To support the same this Court relied on the decision of Hon'ble Apex Court in **Triyambak S. Hedge Vs. Sripad 2022(1) Civil Court Cases 098 (S.C.), "**when the signature on cheque is not disputed presumption would arise U/Sec. 139 of the Act in favour of the complainant who was holder of the cheque, said presumption remains till contrary is proved. To rebut the presumption U/Sec. 139 of the Act, the accused should raise her defence at the time of her first available opportunity.

(b) Further this Court also relied on the decision of the Hon'ble Apex Court in **LAILA FINANCE LTD., HYDERABAD v. S.A. ENGINEERING SERVICES,**

VIJAYAWADA [2012 (2) ALD (Crl.) 298 (AP)] our Hon'ble High Court while considering the presumption under Section 139 of the NI Act held inter alia thus: "9. The presumption under Section 139 of the Act is rebutable presumption, but the burden of proving that a cheque had not been issued in discharge of a debt or liability is on the accused".

(vii) The accused attempted to challenge the signatures on Ex.P1 and Ex.P5 by filing a petition seeking expert opinion. The petition was allowed by this Court. However, when the Forensic Science Laboratory sought contemporaneous admitted signatures for scientific comparison, the accused failed to produce the same despite repeated opportunities. Ultimately, she expressed her inability to furnish such signatures. Therefore, the accused cannot derive any advantage from the incomplete expert opinion proceedings.

(viii) The defence has also relied upon certain admissions of PW.1 regarding the complaint allegedly given by the father of the accused to the Superintendent of Police. Even if such a complaint had been given, the same by itself does not establish that Ex.P1 cheque was stolen or misused. No independent evidence has been produced to substantiate the allegations made against the complainant.

(ix) Much emphasis has been laid by the defence on the suggestion put to DW.1 that her father had borrowed money and that she promised to repay the same. In the opinion of this Court, such a suggestion made during cross-examination cannot by itself override the specific pleadings contained in the complaint and the sworn testimony of PW.1 that the accused herself borrowed the amount and executed Ex.P5 promissory note, but it is not sufficient to dislodge the statutory presumption arising in favour of the complainant.

(x) The evidence of DW.1 is not corroborated by any independent witness. Though she stated that her father was aware of the entire transaction and could be examined, the father of the accused was not examined before the Court. Likewise, no police official, Back Manager examined and no Spandana record were produced in support of the defence case.

(xi) This Court has carefully gone through the decisions relied upon by the learned counsel for the accused, namely "**K. Krishna Reddy v. K. Rajendra and Another, John K. Abraham v. Simon C. Abraham and Another, and M.J. Joseph v. Gladys Sesi".** However, the facts and circumstances involved in the said decisions are distinguishable from the facts and circumstances of the present case. Therefore, the ratio laid down in the said decisions is not directly applicable to the facts of the present case. Accordingly, this Court is of the considered view that the above judgments do not advance the case of the accused and, hence, no reliance can be placed upon the same for deciding the present case.

(xii) The standard required for rebuttal of a statutory presumption is that of preponderance of probabilities. Nevertheless, even on such standard, the accused has failed to place convincing material before the Court. Mere denial of liability or a bare allegation of misuse of cheque, unsupported by acceptable evidence, is not sufficient to rebut the presumptions available under Sections 118 and 139 of the Negotiable Instruments Act.

(xiii) On the other hand, the complainant has established that Ex.P1 cheque belongs to the accused, that the front side signature thereon is admitted, that the cheque was dishonoured under Ex.P2, that Ex.P3 statutory notice was issued within time, that the notice was served under Ex.P4 and that payment was not made within the stipulated period. Thus, all the ingredients constituting an offence under Section 138 of the Negotiable Instruments Act stand proved.

(xiv) Accordingly, this Court is of the considered opinion that the accused failed to rebut the statutory presumptions and that the complainant has successfully established the guilt of the accused. The point for determination is answered in the Affirmative.

(xv) The complainant has proved that the accused issued Ex.P1 cheque towards discharge of a legally enforceable debt and that the cheque was dishonoured. The accused failed to rebut the statutory presumptions available in favour of the complainant.

14. Before concluding the matter, it is necessary to refer to the judgment of the Hon'ble Supreme Court in **SUGANTHI SURESH KUMAR VS.JAGADEESHAN (2002) 2 SCC 420,** wherein, while considering the propriety of an inadequate sentence imposed in a case under Section 138 of the NI Act, the Hon'ble Apex Court expressed its displeasure at courts imposing a "flea-bite sentence" on such accused. The Hon'ble Supreme Court

held that: “No drawer of a cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case.”

15. Further, in **R. Vijayan v. Baby, AIR 2012 SC 528,** the Hon’ble Supreme Court, while considering the aspect of awarding compensation to the complainant, held that " As the provisions of Chapter XVII of the Act strongly lean towards reimbursement of loss by way of compensation. The Court observed that in cases of conviction, the courts should ordinarily levy fine up to twice the cheque amount, keeping in view the cheque amount and reasonable interest, and direct payment of such amount as compensation. It was further held that such restitution should be practical and realistic, ensuring not only repayment of the cheque amount but also interest thereon, thereby enhancing the credibility of cheques as negotiable instruments and strengthening the confidence of the public in the justice delivery system.

16. In view of aforesaid discussions, this Court holds that the complainant is able to establish the guilt of the accused for the offence punishable under Section 138 of NI Act and thereby the accused is liable for punishment. Accordingly, these Points are answered against the accused and in favour of the complainant.

17. In the result, the accused is found guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and she is convicted under Section 255(2) of Cr.P.C.

Typed to my dictation by the Stenographer Grade - III, corrected and pronounced by me in the Open Court, this the 05th day of August, 2026

Sd/- Ms. Nishad Naaz Shaik
IV Addl. Judl. Magistrate of First Class,
Nellore.

18. When the accused is questioned with regard to the quantum of sentence, she submitted that she is recently married and having 8 Months baby and she also has to look after her old-aged parents. She prays to take a lenient view in imposing sentence against her. In view of the facts and circumstances of the case, this Court is not inclined to invoke the provisions of Section 360 of CrPC or the provisions of the Probation of Offenders Act, 1958, bearing in mind the avowed and laudable object of the provisions of the Negotiable Instruments Act.

19. However, considering the submissions of the accused, it would be just and proper to take a reasonable view in imposing lesser sentence against her instead of imposing the maximum sentence prescribed for the offence proved.

20. Accordingly, the Accused is sentenced to undergo simple imprisonment for a period of **Six Months** and also directed to pay an amount of **Rs.3,00,000/- (Rupees Three lakhs only) (being the cheque amount)** to the Complainant towards compensation **within thirty days** from the date of this

Judgment u/s.357 r/w 431 of CrPC. As can be seen from the record, it is axiomatic that the accused was not in judicial custody at any time during the pendency of this case, which fact is also affirmed by the learned counsel for the accused in Open Court that the accused is not entitled to claim any set-off as contemplated u/s.428 of Cr.P.C. The office is directed to furnish a copy of this judgment to the accused at free of cost forthwith and the accused is hereby directed to collect the same without fail.

21. The accused is hereby informed that she has got a right of appeal to assail this judgment before the Hon'ble Superior Court and in that regard, she can also approach the Hon'ble District Legal Services Authority, Nellore, for seeking legal aid if she is inclined and so advised. A copy of this judgment shall also be submitted to the District Legal Services Authority, Nellore, in deference to the instructions of the Hon'ble High Court of AP contained in Circular No.3/2018 in ROC No.228/SO/2018, Dated 15.03.2018.

Typed to my dictation by the Stenographer Grade - III corrected and pronounced by me in the Open Court, this the 05th day of August, 2026.

Sd/- Ms. Nishad Naaz Shaik
IV Additional Judicial Magistrate of First Class,
Nellore.

Appendix of Evidence
Witnesses Examined

For Complainant:

PW1: Kummari Rama Murthy, Complainant

For Defence:

DW1: M.Amaravathi, Accused

Exhibits Marked

For Complainant:

Ex.P1:	Original cheque bearing No. 000011 dated 15.07.2023 for an amount of Rs. 3,00,000/-.
Ex.P2:	Cheque return memo dated 03.08.2023.
Ex.P3:	Office copy of the legal notice dated 05.08.2023
Ex.P4:	Served acknowledgment Dt:07.08.2023
Ex.P5:	Promissory Note Dated 04.12.2021 for Rs.3,00,000/-

For Defence : .. NIL ..

Sd/- Ms. Nishad Naaz Shaik
IV Additional Judicial Magistrate of First Class,
Nellore

//True Copy//

IV Additional Judicial Magistrate of First Class,
Nellore