KAMS0A0012202023

IN THE COURT JUDICIAL MAGISTRATE

FIRST CLASS (III COURT),

AT MYSURU

P R E S E N T

Sri Nagaraja.S., B.Com.,LL.B.,
III JMFC., MYSURU

DATED THIS THE 6th DAY OF AUGUST 2026

CC.No.977/2023

COMPLAINANT		Smt. DARSHINI M.B, D/o Basavaraju, W/o Govardhan N, Aged about 33 Years, R/at Door No:2266/3c, 5th Main Vinayakanagar, Ramamandira Road, Jayalakshmipuram, Mysuru 570012. **(By Sri P.L.R., Advocate)**

- V E R S U S -

ACCUSED	:	Smt. Harshitha N., W/o Sri. Manikantaraj R. , Aged about 34 Years, Ward no.2, Nandini parlor, opposite road, Near Government Hospital, Byrapura, New Tirumakoodalu, T.Narasipura Taluk, Mysore-571124

Alternative Address:

Vijayalakshmi Mathrushreenilaya,
Door no. 2581,
17/G, 2nd cross, Kuvempu Kannada Abhimanigala
Sangha, Kalidasa road,
V.V.Mohalla, vontikoppal,
Mysuru - 570 002

Work Address:

Assistant Professor,
Department of Electronics and Communication, ATME College of Engineering,
13th Kilometer
Mysuru-Kanakapura-Bengaluru road,
Mysuru-570 028

(**By Sri.C.S., Advocate)**

Date of complaint	27.07.2023
Date of Commencement of Evidence	11.08.2023
Date of Closing Evidence	17.04.2026
Offences complied	Section 138 of N.I.Act
Opinion of the Judge	Accused is found guilty

(Nagaraja S)
III J.M.F.C., MYSURU

: J U D G E M E N T :

This complaint is filed under section 200 of Cr.PC by the complainant against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Brief case of the complainant is as follows: The case of the complainant is that,the complainant and accused are known to each other in the last 8 years. Both of them were working together between 2015 to 2023 at ATME College of Engineering. Their relationship extended beyond professional acquaintance, with the complainant trusting the accused and even providing financial assistance during times of need. The complainant and her husband believed the accused was trustworthy and acted in good faith. According to the complaint, the accused gradually gained their confidence and allegedly used that trust to deceive them. Around June 2020, during the COVID-19 pandemic, the accused allegedly persuaded the complainant to lend substantial amounts of money. The accused reportedly promised to repay the loans with interest higher than bank rates. Although the complainant was not a professional money lender, she continued advancing money because of the accused's assurances and previous acquaintance. The complaint acknowledges that the accused repaid some amounts. However, these repayments were comparatively insignificant considering the total money advanced and mainly served to reinforce the complainant's trust. By May 2022, the alleged outstanding amount had reached approximately Rs.17,00,000. The complainant became concerned about the financial burden and repeatedly demanded repayment. The accused allegedly sought repeated extensions and after several discussions and assurances, obtained five months' additional time to repay the outstanding amount, but the complaint suggests that the promised repayment did not materialize. On 23.05.2023, the complainant approached the accused and demanded for repayment. For repayment of the said due loan amount of Rs.17,00,000/-, accused issued a cheque bearing No. "546057" dated 12-06-2023, for a sum of Rs.18,00,000/- drawn on "Canara Bank", New Statute Square branch, Mysuru. On 12.06.2023, the complainant presented the said cheque for encashment through her banker Canara Bank, New Statute Square branch, Mysuru, but on the same day, the banker issued an endorsement that "insufficient funds". Hence, the complainant constrained to issue legal notice to three addresses of the accused through R.P.A.D., on 30.06.2023 calling upon the accused to pay the sum of Rs.18,00,000/- (Rupees Eighteen Lakhs Only) to the complainant but, said notice returned unserved on 04.07.2023 since accused has intentionally avoided to receive the notice and she has not complied in time with said notice.

3. The complainant is further contended that even though the accused did not have sufficient funds in her 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 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.

4. 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.

5. On finding a prima-facie case against the accused, she was summoned. Consequent to the service of summons, accused has appeared through her counsel and offered bail. Then the substance of accusation was read over to the accused in the language known to her. She pleaded not guilty and claimed to be tried. She submitted that, she has defence to make. On 01.10.2024, considering the decision of Hon'ble Supreme Court reported in Indian Bank Association V/s of India and others (2014) (5) SCC 590 (decided on 21-04-2014), the Sworn statement of the complainant is treated as the evidence of complainant. On the same day, statement of accused was recorded U/Sec. 313 of Cr.P.C, wherein she has denied the case of the complainant and incriminating evidence against her as false and she submitted that she would lead her defence evidence.

6. Further, on filing of application u/sec.311 of Cr.PC by the accused counsel, case was reopened for cross-examination of PW1 and counsel for accused fully cross-examined the PW1. On the other hand, accused led her defence evidence and case was proceeded for arguments.

7. Heard Arguments from both the side on merits. Counsel for complainant and accused have filed written arguments taken on record and the case was posted for judgment.

8. In order to prove the case of the complainant, complainant examined herself as PW.1 and got marked the documents at Ex.P.1 to P28. During cross-examination of DW1, Ex. P23 to Ex. P28 have been marked through confrontation. In other side, accused examined herself as DW1 but, no documents got marked on her behalf.

9. The following points would arise for my consideration:

> 1. Whether the complainant proves that, accused issued cheque bearing No.546057 dated 12.06.2023 for Rs. 18,00,000/- towards discharge of her liability, which was returned unpaid on presentation for the reason "funds insufficient" and despite of notice she has not paid the cheque amount and thereby committed an offence punishable u/sec.138 of Negotiable Instruments Act?
>
> 2. What order?

10. My findings on the above point are:

Point No.1: In the **affirmative**

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

R E A S O N S

11. Point No. 1: This Court is of the opinion that it need not repeat the entire averments made in the complaint, as this Court has already narrated the same at the inception of this judgment.

12. The complainant has established the following requirements in order to succeed in this case.

1. That the accused has issued the Ex. P1 cheque bearing No.546057 dated 12.06.2023 drawn on Canara Bank, New Statute Square branch, Mysuru for Rs.18,00,000/- towards the discharge of outstanding legal liability of Rs.17,00,000/-.

2. That the complainant has presented the said cheque for encashment within the period of its validity.

3. That the cheque was returned unpaid for want of “funds insufficient”

4. That the complainant has issued a notice demanding the payment of cheque amount to the accused within the stipulated period on receipt of the intimation regarding the dishonour of the cheque.

5. That the accused has not complied with the notice demand within the statutory period of 15 days from the date of receipt of the notice.

6. That the complainant has filed the complaint within a period of one month from the date of expiry of 15 days grace period allowed for the accused for the compliance of notice demand.

13. It is well settled that whenever complainant alleges that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments

Act, the complainant has to establish that there was a legally enforceable debt as well as that the accused had issued the cheque to discharge the said legally enforceable debt. The complainant in this case must also prove that the said cheque was dishonored and returned back on the shara "funds insufficient". Keeping these important ingredients of section 138 of the N I Act in mind, this Court proceeds to discuss the evidence available on record.

14. It is also pivotal that the complainant adheres to the timeline and the procedure laid out under Section 138 of the negotiable instruments act. The said provision of law is reproduced herewith for a better understanding:

15. **Section 138:** 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 honor 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 provision 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 three 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 of other liability" means a legally enforceable debt or other liability.

16. The essential ingredients to be fulfilled in order to attract the liability under Section 138 of the Negotiable Instruments Act are as follows:

(a) The payee/complainant must present the cheque for encashment within three months from the date on which it is drawn;

(b) The payee/complainant must issue a legal notice to the drawer of the cheque/accused within 30 days from the date of receipt of endorsement from the bank regarding the dishonour of cheque;

> (c) The drawer of the cheque/accused fails to pay the said amount to the payee/complainant within 15 days from the date of receipt of the legal notice.

17. As stated above, the complainant has got herself examined as P.W-1 by filing her examination-in-chief by way of affidavit, as envisaged under section 145 of the Negotiable Instrument Act, and reiterated the entire averments of the complaint.

18. In this scenario, let me scrutinize the documents relied by complainant in order to examine the compliance of statutory requirements envisaged u/sec.138 of N.I.Act. Ex. P-1 is the cheque bearing No.516057 dated 12.06.2023 for Rs.18,00,000/- drawn on Canara Bank, New statue Square Branch, Mysuru. Ex. P-2 is the bank endorsement dated 12.06.2023 which discloses that the aforesaid cheque has been dishonored due to the reason 'funds insufficient'. As per clause (a) of proviso to section 138 of the Negotiable Instrument Act, the cheque is to be presented for encashment within three months or within the period of its validity from the date on which the cheque has been issued. The cheque marked as Ex. P-1 appears to have been presented is stated to have been presented on 12.06.2023 and it appears to have been presented for encashment within the prescribed period.

19. Further, as per clause (b) of proviso to section 138 of the Negotiable Instruments Act, the complainant is required to issue legal notice in writing, to the drawer/accused making a demand for repayment of the said

cheque amount within 30 days from the date of receipt of information about the dishonor of the cheque. Ex. P-3 is the office copy of the legal notice dated 30.06.2023 and the postal receipts are marked as Ex. P-4 to Ex-P6 discloses that the legal notice was issued within 30 days from the date of receipt of the bank endorsement marked as Ex. P-3. Thus, the provisions of clause (a) & (b) of proviso to section 138 of the Negotiable Instruments Act have been complied with. Ex. P7 to Ex. P9 are returned RPAD covers. The complainant has filed this private complaint on 27.07.2023 which is within the time prescribed under clause (b) of Section 142 of the Negotiable Instruments Act and as such, this Court is of the opinion that that the complainant has complied with all the necessary components of section 138 of N I Act.

20. The complainant has discharged his initial burden by examining herself as PW1 and by production of documents.

21. Under criminal jurisprudence, the prosecution has to establish the guilt of accused beyond reasonable doubt. However, in case of proceedings under section 138 of the Negotiable Instruments Act, proof beyond reasonable doubt is subject to the presumptions envisaged under sections 118, 139 and 146 of the Negotiable Instruments Act. The offence under section 138 of N.I. Act is committed for dishonor of the cheque as well as for failure of the drawer of the cheque to make repayment within 15 days of receipt of notice of dishonor, as is held by a plethora of decisions of various Courts.

22. It is also trite to discuss the settled positions of law in cases pertaining to the offence under Section 138 of the Negotiable Instruments Act. In a criminal trial, the onus of proof usually lies upon the prosecution but in cases related to the dishonor of a cheque, the onus of proof is placed upon the accused to disprove and rebut the statutory presumptions available to the complainant. This departure from the fundamental principle of a criminal trial is provided under Section 118(a) read with Section 139 of the Negotiable Instruments Act. It is apropos to refer to the said provision of law before proceeding further. Section 118(a) of the Act reads as follows:

23. Section 118: -Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made: — (a) of consideration: —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

24. Section 139: - Presumption in favor of holder. —It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability.

25. It is abundantly clear from these two provisions that the Court is bound to presume that the cheque in question was issued in discharge of a debt and the onus of

proof is upon the accused to rebut this presumption. But the Courts cannot rely solely on the presumption against the accused as the said presumption is rebuttable and upon the existence of a reasonable suspicion, the burden shifts upon the complainant to prove that the issuance of the negotiable instrument was in discharge of a legally enforceable debt. In order to rebut the statutory presumption under N.I Act, the accused is not expected to prove his defense beyond reasonable doubt as is expected of a complainant in a criminal trial. The accused may adduce direct evidence to prove that the cheque in question was not supported by any consideration or that there was no debt or liability to be discharged by him.

26. It is pertinent to note that the Hon'ble Supreme Court of India in the case of **Hiten P.Dalal v/s Badrinath Banerjee reported in (2001)6 SCC 16** has observed that the Court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated but at the same time, a bare denial regarding the passing of the consideration and existence of the debt would not serve the purpose of the accused. It was further observed in the said case that to disprove the presumption in favor of the holder of the cheque under N.I Act, an accused should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or that their non-existence was so probable that a

prudent man, would under the circumstances of the case, act upon the plea that they did not exist.

27. With that said and discussed, let us examine certain other landmark judgments governing the trial of cheque bounce cases. The Hon'ble Supreme Court of India in the case of **Rohithbhai Jivanla Patel v/s State of Gujarat reported in (2019)18 SCC 106** has held that after the presumption under Section 139 of the N.I Act is drawn, the onus of proof shifts on the accused and unless the accused discharged this onus of proof by bringing on record facts and circumstances to show preponderance of probabilities tilting in his favor, any doubt regarding the source of funds to advance the loan amount to the accused could not be raised. It was further held that the presumption regarding the existence of a legally enforceable debt is a rebuttable presumption and that the standard of proof that the accused must put forth is preponderance of probabilities. It was further held that the accused has to bring on record such facts and circumstances which may lead the Court to conclude that either the consideration did not exist or that its non-existence was so probable that a prudent man would act upon the plea that the consideration did not exist. That once such rebuttal evidence is adduced and accepted by the Court, the onus of proof shifts back to the complainant and the presumptions under Sections 118 and 139 of the N.I Act will not come to the rescue of the complainant.

28. Whereas, in the case of **Basalingappa v/s Mudibasappa reported in (2019) 5 SCC 418, the Hon'ble**

Supreme Court of India has held that once the execution of the cheque is admitted by the accused, Section 139 of the N.I Act mandates a presumption that the cheque was drawn for the discharge of any debt or other liability and that the presumption is a rebuttable presumption, the onus of which is on the accused to raise a probable defence and that the standard of proof for rebutting the presumption is that of preponderance of possibilities. It is clear from these decisions that once the accused discharges this onus of proof, the complaint must prove his case beyond reasonable doubt.

29. An essential ingredient of section 138 of the N.I.Act is that the cheque in question must have been issued towards the discharge of a legally enforceable debt or liability. Sections 118 and 139 of the N.I. Act provide certain presumptions that shall be raised regarding consideration, date, receipt, transfer, endorsement and regarding the holder in due course of the negotiable instrument. These presumptions are mandatory presumptions that are required to be raised in a case involving a negotiable instrument but these presumptions are not conclusive presumptions and are rebuttable in nature. As these presumptions are the mandate of the law, they are to be raised in every case involving a negotiable instrument. Such being the case, it is for the accused to rebut the presumption under section Sections 118 and 139 of N.I Act and to show that the cheque in question was not issued towards any legally enforceable debt or liability. Keeping these important ingredients of section 138 of the N I Act, these principles and position of law in mind, let

us proceed to examine the oral evidence adduced by the parties to this case.

30. The complainant has been examined as PW1. It is the case of the complainant that, the complainant and accused are known to each other in the past 8 years. Both of them were working together between 2015 to 2023 at ATME College of Engineering. Their relationship extended beyond professional acquaintance, with the complainant trusting the accused and even providing financial assistance during times of need. The complainant and her husband believed the accused was trustworthy and acted in good faith. According to the complaint, the accused gradually gained their confidence and allegedly used that trust to deceive them. Around June 2020, during the COVID-19 pandemic, the accused allegedly persuaded the complainant to lend substantial amounts of money. The accused reportedly promised to repay the loans with interest higher than bank rates. Although the complainant was not a professional money lender, she continued advancing money because of the accused's assurances and previous acquaintance. The complaint acknowledges that the accused repaid some amounts. However, these repayments were comparatively insignificant considering the total money advanced and mainly served to reinforce the complainant's trust. By May 2022, the alleged outstanding amount had reached approximately Rs.17,00,000. The complainant became concerned about the financial burden and repeatedly demanded repayment. The accused allegedly sought repeated

extensions and after several discussions and assurances, obtained five months' additional time to repay the outstanding amount, but the complaint suggests that the promised repayment did not materialize. On 23.05.2023, the complainant approached the accused and demanded for repayment. For repayment of the said due loan amount of Rs.17,00,000/-, accused issued a cheque bearing No. "546057" dated 12-06-2023, for a sum of Rs.18,00,000/- drawn on "Canara Bank", New Statute Square branch, Mysuru. On 12.06.2023, the complainant presented the said cheque for encashment through her banker Canara Bank, New Statute Square branch, Mysuru, but on the same day, the banker issued an endorsement that "insufficient funds". Hence, the complainant constrained to issue legal notice to three addresses of the accused through R.P.A.D., on 30.06.2023 calling upon the accused to pay the sum of Rs.18,00,000/- (Rupees Eighteen Lakhs Only) to the complainant but, said notice returned unserved on 04.07.2023 since accused has intentionally avoided to receive the notice and she has not complied in time with said notice.

31. I have carefully perused the Ex. P1 to Ex. P28 documents. Ex. P1 is the original cheque dated 12-06-2023 which is issued by accused in favour of the complainant for a sum of Rs.18,00,000/- drawn on "Canara Bank", New Statute Square branch, Mysuru. The signature of the accused in Ex. P1 is marked as Ex. P1(a). Ex. P2 is the legal notice dated 30.06.2023 issued by the complainant to the accused. A careful reading of legal notice, it is forthcoming that, the

complainant has calling upon with the lawful demand of complainant and realize the amount under the cheque i.e., issued by accused to the tune of Rs.18,00,000/- within 15 days from the date of receipt of notice. Ex.P4 to Ex.P6 are postal receipts, Ex.P7 to Ex.P9 are returned RPAD covers with unserved notices discloses that, notices sent by the complainant to the 3 addresses of accused and one of notice returned unexecuted with a postal shara that “refused” and another returned cover with a shara that “addressee left, hence returned to sender”, and another returned postal cover with a shara that “intimation delivered, door locked”. Ex. P10 to Ex. P15 are ATME College pay slips. Ex. P16 and 17 are HCL company pay slips. Ex. P18 to Ex. P22 are Canara Bank, SBI and ICICI Bank statements.

32. In the cross-examination of DW1, Ex. P23 to Ex. P28 have been marked through confrontation. Ex. P23 is FIR in Cr.No.111/23, Ex.P24 is printouts of Screen shot of whatsapp messages in Mobile in which, complainant and accused did chatting by conversation together, Ex. P25 is Certificate issued under 63 of BSA by SS Enterprises, Mysuru, Ex. P26 is CD, Ex. P27 is also screen shots print outs of messages of conversation held between complainant and accused and Ex. P28 is certified copy of the document sheet.

33. In this regard, this court relied upon the decisions reported in **AIR 1999 SC 3762 – K. Bhaskaran Vs. Sankaran Vaidhyan Balan** wherein the Hon’ble Apex Court held that,

> "Very technical rulers of interpretation which can defeat the object of the provision, encourage the dishonest drawer, embarrass the honest one or affect the interest of the payee, should not be adopted by the Courts. When the notice is returned as unclaimed but not as refused, then also it is another face of evasion. Therefore, the principle underlying in Section 27 has to be made applicable. Thus, once the sender dispatches the notice with correct address of the sendee by post, then the notice is deemed to have been served".

34. In the cross-examination of PW1, she deposed that, no one else was present when she handed-over the money to the accused, only the accused and herself were present. She admitted that, the accused had asked her for a loan of 1 lakh in the year 2020 for her brother-in-law's wedding. PW1 further deposed that, the accused has not issued the cheque at Ex. P1 as security for the said loan amount of Rs.1,00,000/-. She admitted that, the accused used to receive money from her through bank account and she was making repayments through the Bank account. She also deposed that, transactions between the accused and her took place not solely through bank accounts, she received the amount both through bank accounts and in cash. She deposed that, the handwriting on the cheque/Ex. P1 belongs to the accused. She admitted that, handwriting and the signature on the cheque/Ex. P1 are in different inks. She deposed that, the accused did not write the cheque in her presence. She paid approximately Rs.19 lakhs through online and Rs,6 lakhs in cash to accused, but there are no

documents to show about cash payment. She deposed that, it is not true that, she filed a complaint against the accused by herself filling in the blank cheques which were issued by accused for the purpose of security. She further deposed that, when she was personally asked a question that, if there was any difficulty in paying the alleged sum of Rs.6 lakhs through a cheque or Demand Draft, for which, she deposed that, payment was made in cash because the accused had specifically requested it in that form. When PW1 was asked a question that, regarding the claim she has made in this case which includes the money transferred to Roopa's account, for which, she deposed that, accused only instructed her to transfer to that specific account. She further deposed that, specifically, she transferred Rs. 5,75,000 from her account to Roopa's account. She does not know how much money Roopa transferred to her account. Further she deposed that, the fact that the accused had asked for money to be transferred to Roopa's account was not mentioned in the complaint, in the chief-examination affidavit, or in the notice, but she had no difficulty in getting that fact recorded. PW1 has not agreed that, the accused deposited Rs.77,000 into her husband's account on 02-02-2022 and she has also denied that, the accused has returned all the loan amount borrowed from her.

35. On careful perusal of Ex. P1, it appears that, the accused herein had issued cheque in favour of the complainant by putting her signature in cheque dated 12.06.2023. In this regard, in the cross-examination of DW1,

she deposed in Para No.4 that, ಸದರಿ ಚೆಕ್ ನಲ್ಲಿರುವ ಸಹಿ ನನ್ನದು ಎಂದರೆ ಸರಿ. Therefore, this court comes to the conclusion that, Ex. P1/cheque belongs to accused and it bears her signature in Ex. P1. Therefore, in present case on hand, the complainant herein proved her initial presumption u/sec.139 of N.I.Act.

36. Ex. P2 discloses that, the Canara Bank had issued endorsement by stating that, 'funds are insufficient in the account of accused. Thereafter, complainant had issued legal notice dated 30.06.2023 as per Ex. P3. A careful reading of Ex. P3, it appears that, by May 2022, there was total outstanding amount sum of Rs.17,00,000/- which was due to pay by the accused to the complainant. To discharge the said liability the accused had issued Ex. P1 for a sum of Rs.18,00,000/- in favour of complainant. Hence the complainant herein has demanded for loan amount from the accused within 15 days from the date of receipt of notice. Ex. P18 to Ex. P22 discloses that, financial capacity of the complainant to advance the loan amount to the accused. Ex. P23 is the FIR in respect of Cr.No.111/2023 of Varuna Police station. A careful reading of said FIR, it appears that, one Niranjan S has filed a complaint against the accused herein for the offences punishable u/sec.468, 471 and 420 of IPC. A careful perusal of the said FIR, it discloses that, the accused herein was worked as an Assistant Professor in ATME College, Mysuru, and she collected college fees and exam fees amounting to approximately Rs.25,00,000/- (Twenty-Five Lakhs) from the complainant of that Case and about 200 other students, but failed to deposit it into the college

account and accused herein has misused the college funds for her personal use and for collecting fees, she created fake receipts and collected money from students, and issued fabricated receipts to make students believe it was legal, thereby she committed breach of trust and cheating by misappropriating the funds of college , against the students and college management. Hence FIR lodged against the accused. Ex. P24 is the Chat conversation held between the complainant and the accused. A careful perusal of Ex. P24, it appears that, the complainant herein had demanded the loan amount from the accused.

37. The complainant herein had sent messages to the accused herein as below:

> “Harshitha pls help madu , tumba emergency ide, gold pledge maadidrodake bankige interest katbittu renewal madisbeku , pls ninage amount takottu in time katade yav cardallu namage amount sikthila. Pls I need your help.
>
> “ Harshitha namage tumba problem Hagide, eshta thinglu wait madidhini, egaladru amount return madu, nanu nan husband dina ide vishyake jagala aadthidivi”
>
> “ nanagu nan gandanigu tumbane jagala hagi nanage hodedu duddu eskond bandre maneg baa antha illa andre barbeda antha helidare. ega nim mane munde bandidhini, nivu illa , phone hethu thila , ega nanu yen madli yelige hogli illa sayylo Yen madli heli”

> "Dayavittu nin kai mugithini nan duddu full clear madkodu , harsh election mugidmele pls mosa madbeda, tumbane upkara agutte.
>
> "Harsh, send me ur canara account details or shall I send it Roops account"

38. <u>The accused herein had sent a message as below:</u>

> "nija mosa madalla darsh.. ninge antha alla.. yargu madalla. Pls nambi nanna.. nann iskondu idhini , I"ll clear and give.. one rupee nu bidadhee"
>
> "0662101031419 CNRB0000662 Roopa M"
> send to puttu only"
>
> "Darshh"
> "amount"

39. A careful reading of Chat conversation held between complainant and accused prima-facie appears that, the complainant has advanced loan to the accused and so many times, she requested the accused to repay the said amount. In this regard, there was a quarrel between complainant and her husband. Therefore, the complainant has requested the accused to repay the loan amount. Further it appears the accused herein asked the amount from the complainant and she said that the amount should be transferred through the account of Roopa.M and she also sent the account details of Roopa M to transfer the amount.

40. The accused herein had sent a message as per Ex.P24(a) to the complainant as below:

> "sorry darshini.. not able to arrange.. Do one thing. Pls do produce cheque , if you cannot wait.. sadyake mugiyothara kantha illaa. Pls inform to anna also."

A careful reading of said message, it appears that, the accused herself only told the complainant to present the cheque for encashment.

41. The defence of the accused is that the complainant and accused both are friends. They are working in the same college. In the year 2020, The accused borrowed a loan of Rs. 1,00,000/- from the complainant for her brother-in-law's marriage. At that time, the complainant obtained blank cheque from the accused for repayment of Rs.1,00,000/-. The accused had repaid the said amount to the complainant. But the complainant has not returned the said cheque even she asked so many times. The complainant said that the cheque was misplaced at the time of shifting her house. The accused has transferred an amount of Rs.9,39,000/- from her account to complainant account. Further, Rs.9,02,000/- has been transferred from complainant account to accused account. Rs.2,04,500/- has transferred from husband of the complainant account to accused account. Rs.1,92,000/- has been transferred from accused account to complainant's husband account. The accused deposed that, she had already repaid the entire amount which was obtained from the complainant. There is

no due to pay loan amount to the complainant. The complainant has misused the cheque which is obtained from accused and falsely filed present case. Hence, she prayed to acquit the accused from the present case.

42. In the cross-examination of DW1, she deposed that, in the year 2020 onwards, she obtained loan from the complainant and same has been repaid to the complainant. Further, she admits that, in the year 2020 onwards, she was in financial crises. Further she admits that, the Mobile Number 8105710316 is belongs to her and she has sent a message from that number to the complainant Mobile Number. Further, in Para-4 of the cross-examination, she clearly admits that, the cheque is belongs to her and signature contains in Ex. P1 is belongs to her. Further she admitted that, there was loan transaction between the complainant and accused from 06.06.2020 to 09.12.2022. Further she clearly admits that, her brother-in-law's marriage was performed in the year 2020 and the complainant had transferred an amount of Rs.2,33,500/-from her account to accused's account. Further, she admits that, she has received the amount from the complainant through on-line. Further, in Para No.7 of cross-examination of DW1, she categorically admitted that, Ex. P1 i.e., cheque has been given by the accused to the complainant. Further she admits that, she has not sent the message to the complainant for returning the cheque which was issued by her.

43. A careful perusal of the documents and cross-examination of DW-1, it shows that, the accused explicitly

admitted that the cheque (Ex. P1) belonged to her account and bears her signature. Once the signature and issuance of the cheque are admitted, the statutory presumption under Section 139 of the Negotiable Instruments Act arises in favor of the complainant and the cheque was issued in discharge of a legally enforceable debt or liability. In the present case. the accused set up a defense stating she only borrowed Rs.1,00,000/- in the year 2020 for her brother-in-law's wedding. However, her own evidence shows she was transferred Rs.9,39,000/- to the complainant's account. In this regard she offered no explanation in her testimony as to why she repaid Rs.9,39,000/- to complainants account if her debt was only Rs.1,00,000/-. Furthermore, during cross-examination, she admitted that the complainant transferred Rs.2,33,500/-to her account during her brother-in-law's marriage in 2020 and it directly contradicting her claim that she only received Rs.1,00,000/-. Further, Cross-examination of DW1 (Accused) and complainant bank records establish that the accused borrowed loans multiple times between 2020 and 2023. On perusal of Ex. P24 which was confronted during DW1's cross-examination, the accused admitted to WhatsApp chat conversations held between complainant and accused wherein the complainant repeatedly demanded repayment of the borrowed loans. Further, the complainant has advanced loan to the accused and so many times, she requested the accused to repay the said amount. In this regard, there was a quarrel between complainant and her husband. Therefore, the complainant has requested the accused to repay the loan amount. Further it appears the accused herein asked the amount from the complainant and she said that the amount should be transferred through the account of Roopa.M and she also sent the account details of Roopa M to transfer the amount. For establishing loan transaction complainant had produced Ex. P24(a) which shows that, accused specifically requested the complainant to present the cheque before the bank. The chat conversation records show that accused requesting the complainant to transfer loan amount to third-party accounts (e.g., Roopa M / Puttu). Though she denied during cross-examination. Therefore, statements of the accused are contradictory statements and does inspires confidence of the court. The defense raised by the accused is riddled with material contradictions, unsupported by evidence, and completely untrustworthy. The accused has failed to raise a probable defense to rebut the statutory presumption under Section 139 of the N.I. Act. Consequently, the complainant has successfully established the existence of a legally recoverable debt and the guilt of the accused under Section 138 of the Negotiable Instruments Act.

44. As discussed above, the accused has not denied the Ex. P1 does not belongs to her and also her signature in Ex. P1(a). Hence, this court comes to the conclusion that, Ex. P1/cheque is belongs to her and Ex. P1(a) is her signature. It is mandate that, u/sec.118 and 139 of N.I.Act , if the accused admits that the cheque belongs to her account and bears her signature, the court is legally bound to presume that the

cheque was issued for the discharge of a legally enforceable debt or liability.

45. When an accused admits her signature on a cheque in a dishonour case, it creates a strong legal presumption u/sec.139 of N.I.Act. Therefore, this court presumes that the cheque was issued to discharge a legally enforceable debt. Once, the signature is admitted, the court assumes that, the cheque was handed-over to settle on actual, legally binding debt or financial obligation and cheque was issued for valid consideration.

46. Further, it is settled principle of law that filling of particulars of cheque by any person other than the drawer does not invalidate the cheque and shall still attract the presumption under Section 139 of the NI Act. The same was held by the Hon'ble Supreme Court of India in the **decision cited as Bir Singh vs Mukesh Kumar (2019) 4 SCC 197**. The apex court observed as follows:

> "37. A meaningful reading of the provisions of the Negotiable Instruments Act including in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.”

47. Further Ex. P1 to Ex. P28 are clearly supports the case of the complainant. Therefore, this court is of the opinion that, the accused testimony as an afterthought and careful consideration of the oral and documentary evidence, it is clear that the accused had obtained loan from complainant through online and cash and issued cheque in favour of complainant. But the defence of the accused is that. In the year 2020, The accused borrowed a loan of Rs. 1,00,000/- from the complainant for her brother-in-law's marriage. At that time, the complainant obtained blank cheque from the accused for repayment of Rs.1,00,000/-. The accused had repaid the said amount to the complainant. But the complainant has not returned the said cheque even she asked so many times. However, her own evidence shows she was transferred Rs.9,39,000/- to the complainant's account. In this regard she offered no explanation in her testimony as to why she repaid Rs.9,39,000/- to complainants account if her debt was only Rs.1,00,000/-. Furthermore, during cross-examination, she admitted that the complainant transferred Rs.2,33,500/-to her account during her brother-in-law's marriage in 2020 and it directly contradicting her claim that she only received Rs.1,00,000/-. Further, Cross-examination of DW1 (Accused) and complainant bank records establish that the accused borrowed loans multiple times between 2020 and 2023. Therefore, the defence taken by the accused does not inspire confidence in view of the material on record. Since, the accused has not denied her signature in Ex. P1

and she admits her signature on Ex. P1 regarding borrowing of loan from the complainant, therefore, her defence that complainant had misused the cheque is improbable and unreliable.

48. The close study of Ex.P.1 discloses the fact that, Ex.P.1 is cheque and Ex.P.1(a) is signature of the accused. Accused nowhere disputed her signature on Ex. P1. Hence, it is crystal clear that, Ex.P.1 is issued by the accused towards the repayment of the amount borrowed from the complainant. But, the available on record discloses that, she had not repaid the loan amount to the complainant. In the absence of repayment, the court is justified in drawing a presumption that Ex. P1 cheque was issued towards discharge of the said legally enforceable debt. The accused has failed to rebut the statutory presumption by any cogent or acceptable evidence. The defence of the accused regarding misuse of security cheque remains a mere assertion without proof, and does not displace the legal presumption in favour of the complainant. In view of the above circumstances, the complainant has successfully established that, Ex. P1 cheque was issued towards discharge of a legally enforceable debt and the accused has failed to rebut the statutory presumption.

49. The accused has not denied her signature in Ex. P1, it significantly strengthens the complainant’s position and as a statutory presumption under the Act, of an entirely in favour of the complainant. Further, careful reading of the defence taken by the accused in her oral evidence they are clearly shows that, there is a contradict to each other. Under

the above circumstances, the accused has not satisfactorily explained or rebutted the mandatory presumption. Therefore, the issuance of cheque by the accused for discharge of legally recoverable debt stands proved. Though accused has raised her defence, but has not proved the same with cogent oral and documentary evidence. Thus, the accused has not rebutted the presumptions under Section 119 and 139 of Negotiable Instruments Act. Hence, in the above said reasons, this court is of the view that, the accused has committed offence punishable under Section 138 of Negotiable Instruments Act when the accused is held to the commission of offence, she is liable to be punished for the said offence. Therefore, the complainant has proved all the ingredients of Section 138 of Negotiable Instruments Act. Hence, in the above said reasons, this court is of the view that, accused is liable to pay the amount of Rs.18,00,000/- recoverable under Ex.P.1 to the complainant and the said amount to be paid by the accused, shall be paid to the complainant by way compensation. Accordingly, this court answers point No.1 in the **affirmative**.

50. Point No.2 : The complainant, through his oral evidence and documentary evidence, has proved that the accused has committed the offence punishable under section 138 of N.I. Act. Therefore, the complainant through his oral and documentary evidence coupled with the presumption available under sections 118 and 139 of the N.I. Act, has proved his case. Having regard to the fact that the money transaction was of the year 2020 and the prosecution was commenced in the year 2023 and the amount is substantial to the tune of Rs.18,00,000/-, it is just and proper to sentence the accused to pay fine. The Negotiable Instruments Act was enacted to bring credibility to a cheque or a negotiable instrument and the very object of the enactment is to promote the use of negotiable instruments. Under such circumstances, the intention of the legislature is that complainant must be suitably compensated while accused is punished for his act. Therefore, the complainant is entitled for the compensation as per section 80 and 117 of the Negotiable Instruments Act, considering the compensatory principles laid down by the **Hon'ble Apex Court in R Vijayan Vs. Baby and another reported in (2012)1 SCC 260** and also in view of my discussions on **Point No.1 in the Affirmative**, this Court proceed to pass the following;

O R D E R

Accused found guilty for the offence punishable under section 138 of Negotiable instruments Act.

Acting under Section 255(2) of Cr.PC accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instrument Act.

The accused is sentenced to pay fine of Rs.18,00,000/- and in default of payment of fine, she shall undergo simple imprisonment for a term of 3 months.

The fine amount of Rs.18,00,000/- is ordered to be paid to the complainant towards compensation under Section 357(1) of Cr.P.C.

Further, it is made clear that in view of proviso to section 421(1) of Cr.P.C, the accused shall not be absolved of his liability to pay compensation amount of Rs.18,00,000/- awarded under Section 357 of Cr.P.C even if she undergoes the default sentence.

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

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

(Dictated to the Stenographer directly, typed by her into computer, revised and corrected by me and signed, pronounced in the Open Court this the 6th day of August 2026)

(NAGARAJA S)
III JMFC , MYSURU

ANNEXURE

LIST OF WITNESSES EXAMINED FOR COMPLAINANT:

PW.1	Darshini

LIST OF DOCUMENTS MARKED FOR COMPLAINANT:

Ex.P.1	Cheque
Ex.P.1(a)	Signature
Ex.P.2	Endorsement of Bank
Ex.P.3	Legal notice
Ex.P.4 to P.6	Postal receipts
Ex.P.7 to 9 & Ex.P7(a) to Ex.P9(a)	RPAD returned covers and their notices
Ex.P10 to Ex.P.15	ATME College pay slips
Ex.P16 & Ex.P.17	HCL company pays slips
Ex.P18	Canara Bank statement
Ex.P19 to Ex.P21	SBI Bank statements
Ex.P22	ICICI Bank statement
Ex.P23	FIR in Cr.No.111/2023
Ex.P24	Screen Shot messages
Ex.P24 (a)	Screen shot message
Ex.P25	Certificate u/sec.63 of BSA
Ex.P26	CD
Ex.P27	2 screen shot print outs
Ex.P28	Certified copy of document sheet

LIST OF WITNESSES EXAMINED FOR ACCUSED:

DW1	Harshitha

LIST OF DOCUMENTS MARKED FOR ACCUSED :

NIL

(NAGARAJA S)
III JMFC , MYSURU