KADG620001032021

Presented on : 08-02-2021
Registered on : 08-02-2021
Decided on : 24-07-2026
Duration : 5 years, 5 months, 16 days

IN THE COURT OF CIVIL JUDGE AND J.M.F.C., AT: JAGALUR

Present: - Sri Chethan R.,
B.A.L., L.L.B.
Civil Judge & J.M.F.C., Jagalur

Dated : 24th Day of July 2026

C.C No. 33/2021

Sri B.Venkatesh S/o Bheemappa
Age: 36 years, Occ: Agriculturist,
R/o: Bharamasamudra village,
Jagalur Taluk,
Davanagere District. **.... Complainant**

-V/s-

Sri Mansur S/o Khadar Sab,
Age: 31 years, R/o Ashwath Badavane
Near Nataraj Talkies
Jagaluru Town,
Davanagere **....Accused**

Complainant by Sri. D.S - Advocate.
Accused by Sri. D.D.B – Advocate.

JUDGMENT

The complainant has presented the complaint under Section 200 of Cr.P.C. against the accused for the alleged offence punishable under section 138 of N.I.Act.

2. **<u>The Brief facts of the complainant case is as follows :-</u>**

That the complainant and accused are well acquainted with each other. The accused for his family necessities approached complainant and took hand loan for Rs.5,00,000/- on 29/11/2020 and assured he will repay the said amount on same day he issued a postdated cheque bearing no 306466 dated 29/12/2020 drawn on Canara Bank, Jagaluru Branch of Rs 5,00,000/-.

3. It is further case of the complainant that he presented the aforesaid cheque for encashment through his banker Canara Bank, Jagaluru Branch on 29/12/2020. The said cheque got dishonoured and returned back with endorsement “Funds Insufficient” on 30.12.2020. The complainant got issued legal notice through his counsel on 01/01/2021 calling upon the accused to make payment of the dishonoured cheque amount. The legal notice was duly served upon accused on 01-01-2021. In spite of same he has not returned the cheque amount nor sent reply to the legal notice. Hence, complainant is constrained to file this complaint for the said relief.

4. After receipt of complaint, this court has taken cognizance of the alleged offence and sworn statement of complainant was recorded and process was issued to the accused. The accused appeared before the court through his counsel and got enlarged on bail. The substance of accusation was

read over and explained to the accused, wherein he pleads not guilty and claimed to be tried.

5. In order to prove the complainant case, complainant was examined as PW.1 and he exhibited Ex.P1 to Ex.P6 documents and closed his side. As per the guidelines issued by the Hon'ble High Court of Karnataka in decision Crl. Rev. Petition No. 1333/2018 between Ashwathnarayan V/s Shankar the examination of accused under section 313 of Cr.P.C was dispensed. The accused himself got examined as DW1, no documents were produced in support of accused defence.

6. Heard the arguments of both the side, counsel for complainant filed written arguments and pursued the entire papers.

7. The following points that arises for my consideration are:-

   1. Whether complainant proves that on 29/11/2020 he had lent hand loan of Rs. 5,00,000/- to the accused and Ex.P1/Cheque was issued in discharge of the said debt, the same was dishonoured and even after issuing notice the accused had failed to pay the amount and thereby accused is guilty of the offence punishable under Section 138 of N.I. Act ?

   2. What Order?

8. My findings on the aforesaid points are as under :-

Point No. 1 : In the Affirmative

Point No. 2 : As per the final order

for the following…

R E A S O N S

9. **Point No.1** :- To substantiate the case of the complainant, he himself got examined as PW.1 and in his chief examination he reiterated the entire averments of complaint and also produced documents which are got marked as Ex.P1 to Ex.P5. Ex.P1 is the bank endorsement, Ex.P.2 Legal notice, Ex.P.3 Postal receipt, Ex.P.4 Postal acknowledgement, Ex.P.5 original cheque in question said to have been issued by the accused. Ex.P5(a) is the signature of the accused on cheque. on perusal of Ex.P1 which reveals that the Ex.P5/cheque was dishonoured for the reasons "Funds Insufficient". All these documents goes to show that after dishonour of cheque and after receiving the bank endorsement the complainant had issued the demand notice to the accused within time. Thereafter completion of 15 days from the date of intimation of notice, the complaint come to be filed within time.

10. In this case, PW-1 is cross-examined at length by learned counsel for accused, and the accused also examined

himself as DW1 and he was also subjected to cross examination by the counsel of complainant.

11. Before appreciation of the evidence of both parties it is appropriate to provision of 139 NI act and also to refer the decisions of the Hon'ble Supreme Court and the Hon'ble High Court of Karnataka. In order to raise a presumption U/Sec. 139 of N.I Act the following three ingredients of the offence under section 138 NI act must be shown that is:

(i) that there is a legally enforceable debt

(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and

(iii) that the cheque so issued had been returned due to insufficiency of funds.

12. As per the rule of law laid down by the **Hon'ble Supreme Court** in **Ragappa V/s Mohan** Reported in **AIR 2010 SC 1898** the full bench of Hon'ble Supreme Court held as follows:

> **The presumption under 139 NI act is the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no**

doubt that there is an initial presumption which favors the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to

> **discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under <u>Section 139</u>, the standard of proof for doing so is that of `preponderance of probabilities. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.**

13. As per directions issued by the **Hon'ble High Court of Karnataka** held in the decision rendered in **Crl. Rev. Petition No. 1333/2018** between **Ashwathnarayan V/s Shankar** in para no 15 held as follows:

> **15. This Court too has come across a few ills that has plagued the expeditious disposal of cases and consequently, a slew of practice directions in addition to the directions issued by the Hon'ble Apex Court is issued for compliance by all Courts in the State of Karnataka while dealing with cases under Section 138 of N.I. Act.**
>
> **xvi) The Magistrate shall in every case complaining the commission of an offence under Section 138 of N.I. Act, draw the presumption under Sections 118 and 139 of N.I. Act as held in RANGAPPA v. SRI MOHAN [(2010) 11 SCC 441] and examine whether the defence of the accused is either plausible or moonshine and thereafter decide the case.**

14. On applying the guidelines of the above decision in this case also the as the complainant have fulfilled the ingredients of offences under section 138 NI act, It is necessary to rise presumption available to complainant under section 139 NI act. And it is to see whether accused

have successfully rebutted the presumption. In this case the accused have thoroughly cross examined the Complainant/ PW1 and also lead his defence evidence.

15. In this case, the counsel for accused has thoroughly cross examined the PW1 complainant. In the cross examination, it has been suggested that there is no acquaintance with the complainant and accused. Complainant has not paid any amount to the accused. There is no legal recovery debt of Rs.5,00,000/-. The specific defence of the accused is that accused has taken a loan of Rs.1,00,000/- from one Peddanna and in order to repay the said amount he has issued a cheque without putting his signature as security. The said Peddanna misused the same and filed this case through complainant. The said suggestions were denied by the complainant PW1. In order to prove the said defence also, the accused has also got himself examined as DW1 and in his chief examination also, he has stated that there is no legal record debt of Rs. 5,00,000/- from the complainant. He has taken Rs.1,00,000/- from the Pedanna in the year 2019 and to return the said amount he has issued Unsigned blank cheque as security. He has returned the said amount of Rs.1,00,000/- to Pedanna in the year 2020 itself. But due to lock down of COVID-19 epidemic, the said Pedanna has not returned the cheque. The said Pedanna has misused the cheque and filed this false case through complainant.

16. In the cross-examination of DW1, the accused has admitted that he is doing a masonry work from past 15 to 20 years, he and his brother Muzamil is also doing masonry work. But he denied the suggestions that he has constructed house belonging to the complainant. He also admitted that another 138 proceedings in CC 927/23 against him before Kudligi Civil Judge Court. He also admitted the signature found in Exhibit P5 cheque and also admitted that, if he has not put his signature, then the bank would issue the reason signature differs. He also admitted the signature found in Exhibit P4 postal acknowledgment issued by postal department is his signature. He also admitted that he has not taken any legal action against the said Pedanna who has allegedly misused the Exhibit P5 cheque and he also admitted that he has not taken any action nor issued a stop payment letter to his bank. He also admitted that he has received Exhibit P2 notice and he has not sent any reply notice to Exhibit P2 legal notice. He denied other suggestions put to him.

17. As such it is pertinent to note that during the course of cross examination of PW1 the counsel for accused has taken specific contention that the Exhibit P5 cheque was issued to one Pedanna as blank cheque without putting the signature of the accused. But as such in the cross examination of DW1 accused, he himself admitted that the signature found in Exhibit P5 cheque is his signature and

he also admitted that the signature found in Exhibit P4 postal acknowledgement is also belonging to him. As such on perusal of both signatures found in Exhibit P4 and Exhibit P5, it appears that, it is a similar signature made by accused himself. As such, the accused himself admitted that signature found in Exhibit P5 cheque is his signature. Therefore, statutory presumption would be available in favor of the complainant. It is burden duty upon the accused in order to rebut that statutory presumption. As such, the specific defence taken by the accused is that he has taken Rs.1,00,000/- Loan from one Pedanna and he has given a blank cheque to the Pedanna. In spite of returning the Rs.1,00,000/- the Pedanna in the year 2020, the said Peddana has not returned the cheque and he misused the Exhibit P5 cheque and filed this false complaint through this complainant. But as such, DW1 himself admitted that he has not taken any action against the said Pedanna who has allegedly misused Exhibit P5 blank cheque. He also admitted that he has not issued any reply notice after the receipt of Exhibit P2 legal notice. As it appears that the accused himself admitted that he has not taken any legal action against one Pedanna and the accused himself has admitted the signature in ExP 5 cheque, and also admitted the receipt of legal notice, but he has not issued any reply notice to Exhibit P2 legal notice. As it also appears that accused also not giving any stop payment instructions to his bank would also appear that the defence of the accused cannot be considered.

18. During the course of arguments, the counsel for accused has vehemently argued that the complainant admitted that he will produce the documents receipt of Rs.5,00,000/- in order to prove his financial capacity as on date of giving loan to the accused. But, in order to consider the financial capacity, it is burden duty upon the accused should rebut the statutory presumption available in favor of complainant. It is also well settled that the in order to rebut the statutory presumption, accused must give adduce cogent evidence. Only bald suggestions cannot be considered that the accused has rebutted the statutory presumption. Therefore, accused has failed to rebut the statutory presumption available in favor of complainant.

19. It is also pertinent to note that the very defence taken by the accused that Exhibit P5 cheque was not issued to the complainant. In turn, it was issued to one Pedanna as security for loan of Rs 1,00,000/-, then the burden would be upon the accused in order to prove the same. Since there is a deferent version of the defence taken by the accused during cross examination of the PW1 and in his defence evidence, cannot be considered as rebuttable evidence in order to rebut the presumption available in favor of the complainant.

20. It is well settled law that a plea of financial capacity would be considered only after if the accused has successfully

rebutted the presumption available in favor of the complainant. In this case, since the accused has not shown a provable defence as there is no existence of legal recoverable debt between the complainant and accused.

21. At this juncture, this Court would rely upon the Decision of Hon'ble Supreme Court in **Tedhi Singh vs Narayan Dass Mahant** cited in **2022 IN SC 272** held in as fallows:

> **The Trial Court and the First Appellate Court have noted that in the case under Section 138 of the N. I. Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the N. I. Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent the Courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is**

acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

22. In the decision of **ASHOK SINGH** versus **STATE OF UTTAR PRADESH & ANR** cited in **2025 INSC 427** the **Hon'ble Supreme Court** held in para no 22 as fallows:

The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that

the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan.

23. In this case, there is no specific defence of the accused only bald suggestions regarding legal recoverable debt, which were been put forth by the accused counsel which were specifically denied by the complainant/PW1. He has not specifically denied that the signature found on Ex.P5-cheque is not of his. As the accused admitted his signature on the ExP5 cheque in his cross examination, as per the presumption U/Sec.118 and 139 of N.I.Act the burden is upon the accused to prove that there is no legal recoverable debt to the complainant. In the present case the accused has made attempts to rebut the presumption U/Sec.118 and 139 of N.I. Act but he failed to do so. As per Sec. 106 of the Evidence Act it is the burden upon the accused to disclose under what circumstances he tendered Ex.P5-cheque to the complainant. Absolutely, the accused have failed prove his defence in this regard.

24. The accused keep on attacking the complainant's case in several facts, but he has failed to prove his defence. It is

true that the accused need not prove his defence beyond reasonable doubt, but he must show preponderance of probabilities in suffice to demolish the complainant case on the basis of material which is already there on record. But, in the present case, accused has not rebutted the presumption on the basis of material which is thereon record and also in his evidence.

25. It is the contention of the accused that he never done any transaction with the complainant and complainant misused the cheque issued to one Pedanna. But the accused has not produced any material before the court to show that if really complainant got cheque by cheating him, what prevented him to file complaint before the competent authority is to be explained by the accused.

26. That U/Sec.139 of Negotiable Instrument Act there is a presumption available in favor of the holder of the cheque that, cheque is issued for repayment of legally enforceable debt. The contrary has to be proved by the accused. Mere say of the accused before the court without any documents is not sufficient to rebut the presumption. The cheque as well as other documents produced by the complainant reveals that, cheque was issued to discharge the legally enforceable debt and the cheque was dishonored for want of funds and notice was issued to the accused. No material available on record to show that, complainant cheated the accused.

27. At this stage the evidence of the complainant and documentary evidence of the complainant clearly goes to show that cheque was issued by the accused to the complainant. Hence, the contention of the accused that he never done any transaction with the complainant and complainant misused the cheque is not acceptable not believable one. The oral and documentary evidence adduced before the court by the complainant is fully corroborating with each other. There is whatsoever doubt in the mind of the court about the case of complainant. The Ex.P.2 clearly discloses that, the Ex.P.5 cheque dishonored as there is no sufficient funds in the bank account of the accused. This fact has not been denied by the accused. The oral and documentary evidence adduced before the court by the complainant is fully corroborating with each other along with the complaint averments and fully convinced the court that, the accused after the receipt of the loan amount of Rs.5,00,000/- had issued Ex.P.5 cheque to repay the loan amount and same was dishonored as there is no sufficient funds in the bank account of the accused. The accused has failed to rebut the case of complainant by adducing sufficient evidence before the court. The complainant by adducing oral and documentary evidence before the court has proved the guilt of the accused beyond all reasonable doubts to the satisfaction of the court. There is no whatsoever doubt in the mind of the court about the case of complainant. For the above reasons court is of the opinion

that by all the probabilities, the accused has committed the offence punishable u/s.138 of the N.I.Act. Accordingly, this court answers the point no.1 in **Affirmative.**

28. **<u>Point No.2</u>** :- For the reasons discussed in the point No.1, the complainant has proved the guilt of the accused punishable U/Sec.138 of N.I Act. The Section 138 NI act Impose the sentence of imprisonment up to two years or fine may extend of double cheque amount or both. As per decision of Hon'ble Apex Court between **M/s Meters and Instrument Private Limited V/s Kanchana Mehta**, reported in **(2018) 1 SCC 560** wherein it is held that,

> **The scheme is to follow summary procedure except where exercise of power under second proviso to <u>Section 143</u> becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.".**

29. On consider the above decision, it could be said that, the time when the transaction taken place and the primary object of the provision being kept in mind, This court considered view that rather imposing sentence of Imprisonment, if sentence to pay fine is imposed with a

direction to compensate the complainant for his financial loss as per section 357 of Cr.P.C., it would meet the ends of justice.

30. Under these circumstances, it would be just and proper to impose fine of Rs.5,30,000/-. On recovery of fine amount, the complainant shall be compensated of Rs.5,30,000/- as per section 357 of Cr.P.C.

31. In view of my above findings and reasons, this court proceed to pass the following:

O R D E R

The Accused found guilty for the offence punishable under section 138 NI act.

Under power confirmed to this court U/sec. 255(2) of Cr.P.C the accused is convicted for the offence punishable U/Sec 138 of NI act.

The accused is sentenced to pay fine of Rs. 5,30,000/- (Rupees Five Lakh Thirty Thousand Only) and in default shall undergo simple imprisonment for 6 (six) months.

In view of direction of **Hon'ble High Court of Karnataka** in **Crl.R.P 64/2017** between **Chandrappa V/s N.S.Ajjappa,** the entire fine amount recovered shall be paid to the complainant as compensation in view of Section 357 Cr.P.C.

Office to furnish free copy of this Judgment to Accused forthwith.

(On my dictation the stenographer directly typed in the computer, corrected by me and then pronounced in open court on this 24th July 2026)..

CHETHAN R

Digitally signed by CHETHAN R
Date: 2026.07.24 17:46:42 +0530

(CHETHAN.R)
Civil Judge & JMFC,
Jagaluru.

A N N E X U R E S

List of witnesses and documents examined for prosecution:

PW1	:	B.Venkatesh

List of documents marked for prosecution.

ExP.1	:	Bank endorsement.
ExP2	:	Legal notice
ExP3	:	Postal receipt
ExP4	:	Postal acknowledgement
ExP5	:	Original cheque
Ex.P.5(a)	:	Signature

Witnesses examined on behalf of accused :

DW1	:	Manusur

Documents exhibited on behalf of accused :

--Nil--

CHETHAN R

Digitally signed by CHETHAN R
Date: 2026.07.24 17:46:54 +0530

(CHETHAN.R)
Civil Judge & JMFC,
Jagaluru.