KABC030570982024

Presented on : 14-10-2024
Registered on : 14-10-2024
Decided on : 01-07-2026
Duration : 1 years, 8 months, 18 days

IN THE COURT OF THE XVI ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BENGALURU CITY

Dated: This the 1st day of July 2026

Present: Smt.Tejaswini K.M., B.A.L.LL.M,
XVI Addl.C.J.M., Bengaluru City.

CC. No.33615/2024

Smt.Geetha
W/o (Late) Shri.Anand,
Aged about 38 years
R/at #56, Ramaswamy Building,
3rd Cross, 3rd Main,
Netaji Road, Uttarahalli,
Bengaluru – 560061.

....Complainant

(By Sri P.L.S., Advocate)

Versus

Shri.T.K.Vasudeva Kamath
S/o Shri.T.V.Krishna Kamath
Aged Major,
R/at Kushavathi Town,
Teerthahalli Taluk,
Shivamogga District – 577432.

.... Accused

(By Sri L.C.N., Advocate)

Offence complained	:	U/Sec.138 of Negotiable Instrument Act.
Date of commencement of evidence	:	11.09.2024
Date of closing evidence	:	17.01.2026
Opinion of the Judge	:	Accused found guilty
Offence complained	:	U/Sec.138 of Negotiable Instrument Act.
Opinion of the Judge	:	Accused found guilty

J U D G M E N T

This case is registered against the accused for the offence punishable U/s 138 of Negotiable Instruments Act.

<u>2. Factual matrix of the complainant's case is as under:</u>

It is stated that the complainant’s husband i.e. deceased Mr.Anand and sister of accused by name Smt.Shwetha.S Bhat, shared a good relationship and they were reliable friends. Out of the acquaintance with the sister of the accused, the complainant’s husband met with accused. The accused expressed his willingness and intend to commence a new business and sought financial assistance from the complainant’s husband. Accordingly, the husband of the complainant has paid Rs.20,00,000/- by way of cash by pledging gold owned by complainant and her husband, as requested by the accused and the accused has agreed to return it within 3 years.

3. Further the accused voluntarily executed a loan agreement dated 14.02.2024 and also executed sale agreement dated 14.02.2024 in favour of the husband of the complainant. To these documents, the sister of the accused, mother and wife of the accused and friend of the accused have signed as witnesses. While executing the said loan agreement, the accused has also handed over his LIC policies registered in his name, his wife’s name along with title deeds of the site property, located in Teerthahalli, Karnataka for security purpose.

4. After some time when the husband of the complainant asked the accused to return the amount, the accused started avoiding him. Since the husband of the complainant has taken loan to help the accused loan, there was huge burden on him. As the accused failed to return the amount and also insulted him with filthy language, he suffered mental torture, under the burden of threats and instances of fear, the complainant's husband committed suicide on 28.03.2024.

5. After his death, the complainant has approached the accused and his sister and requested to repay the amount and that time the accused has voluntarily issued 2 cheques bearing Nos.955434 and 955447, both dated 29.06.2024 for Rs.10,00,000/- each, drawn on SBI, Theerthahalli Branch in favour of the complainant in discharge of the said liability.

6. When those cheques are presented, they got dishonoured for the reason 'funds insufficient' vide memo dated 03.07.2024. Therefore, the complainant got issued a legal notice on 14.07.2024 demanding the accused to make payment of cheques amount within 15 days and it was delivered to the accused on 18.07.2024. But the accused gave an untenable reply and he failed to repay the amount. Hence the complainant has constrained to file the present complaint.

7. After receiving the complaint, this court has meticulously gone through the documents and affidavit filed along with it and then took cognizance of the offence punishable U/sec.138 of Negotiable Instruments Act and ordered for registration of the compliant as P.C.R.

8. Sworn statement of the complainant was recorded and marked 33 documents as Ex.P-1 to P-33. As there were sufficient materials to constitute the offence, this court has proceeded to pass an order for issuing process against the accused.

9. In pursuance of summons, accused has appeared through his counsel and applied for bail. He was enlarged on bail. Then the substance of accusation was read over to the accused in the language known to him, for which he pleaded not guilty.

10. As per the direction of Hon'ble supreme court in **“Indian Bank Association V/s Union of India and others**

reported in (2014)(5) SCC 590, this court treated the sworn statement of the complainant as complainant evidence and posted matter for cross-examination of PW.1. The counsel for the accused has fully cross-examined PW.1.

11. The statement of accused as contemplated under the provisions of Section 313 of Cr.P.C has been recorded vide order dated 22.01.2025 and the incriminating evidence as such forthcoming against the accused in the evidence of PW.1 and the documents has been read over and explained to the accused in the language known to him. He denied all incriminating evidence.

12. In order to substantiate his defense, the accused got himself examined as DW.1 and he had been cross-examined by the learned counsel for the complainant.

13. I have heard the arguments of the learned counsel for both the side and perused the oral and the documentary evidence placed on record and gone through those case laws.

14. Points that arise for my consideration are as under:

1. **Whether the complainant proves that the accused towards discharge of his liability issued 2 cheques bearing Nos.955434 and 955447 both dated 29.06.2024 for Rs.10,00,000/- each, drawn on State Bank of India, Thirthahalli Branch in favour of complainant, on presentation of the same for encashment, they were dishonored for “funds insufficient” in the account maintained by the accused, then in-spite of issuing demand notice to the Accused and in complying with statutory requirement under Negotiable Instrument Act, Accused did not repay the cheques amount, thereby he has committed an offence punishable U/s 138 of Negotiable Instruments Act?**

2. **What Order?**

15. My Answer to above points are as under:-

Point No.I :- In the Affirmative,

Point No.II :- As per the final order for the following....

R E A S O N S

16. **<u>POINT NO.I:-</u>** The **defence of the accused** is that he does not know the complainant or the husband Mr.Anand. He has not issued the disputed cheque and the documents to the complainant. When he had health issues, his sister by name Smt.Shwetha has visited his house, taken the documents and misused them. When he asked his sister to return those documents, she told that she will return, but not returned them back. After receiving the notice of this case, he got to know that his documents are misused. He was not in need of Rs.20 lakhs and he never borrowed such money from the complainant or her husband. Therefore on these grounds, he prays to acquit him from this case.

17. Negotiable Instruments Act provides for some presumption in favour of the complainant i.e., Section 118 reads as here: - "That every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration".

18. Further Sec 139 of the Negotiable Instruments Act provides for presumption in favour of a holder. It reads as here: - "It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in sec 138, for the discharge, in whole or in part, or any debt or other liability."

19. Combined reading of above said sections raises a presumption in favour of the holder of the cheque that he has received the same for discharge in whole or in part of any debt or other liability. However, it is settled principle of law that the presumption available u/s 139 NI Act can be rebutted by the accused by raising a probable defense.

20. The complainant has examined as PW.1 and she has reiterated the contents of the complaint in her chief-examination and got marked Ex.P1 to P33. She has produced the cheques issued by accused and the same are marked as Ex.P-1 & 2, the signatures of the accused are marked as Ex.P-1(a) & 2(a), copies of bank memos are marked as Ex.P-3 & 4, copy of demand notice dated:14.07.2024 is marked as Ex.P-5, copy of postal receipt is marked as Ex.P-6, copy of track consignment is marked as Ex.P-7, Certificate U/Sec.63 of Evidence Act is marked as Ex.P-8, copy of reply notice is marked as Ex.P-9, postal cover is marked as Ex.P-9(a), copy of loan agreement is marked as Ex.P-10, copy of agreement is marked as Ex.P-11, copies of LIC Bonds are marked as Ex.P-12 to 20, copy of Consent Deed is marked as Ex.P-21, copies of absolute sale deeds are marked as Ex.P-22 to 24, copy of death certificate of husband of complainant is marked as Ex.P-25, copy of receipts issued Manippuram Finance are marked as Ex.P-26 & 27, copy of complaint to police commissioner is marked as Ex.P-28, copy of acknowledgment issued police is marked as Ex.P-29, copy of requesation and statements are marked as Ex.P-30 to 32 and copy of requisition to police commissioner is marked as Ex.P-33. PW.1 has been cross-examined by the counsel for the accused.

21. Percontra, the accused has also stepped into witness box and orally deposed about his defense as stated supra and he has been cross-examined by the counsel for the complainant.

22. The counsel for the complainant has argued that in the reply given to the legal notice, the accused has admitted that he knows the husband of the complainant where as in his evidence, he denied it. The stand taken by the accused in the reply notice as well as his chief examination are not in tune with each other. For taking the loan, the accused himself has handed over all original documents to the complainant which are produced in this case. The accused has failed to prove his defence in accordance with law. Hence, he prays to convict the accused.

23. The counsel for the accused has argued that there is no financial transaction between the complainant or her husband with the accused. The complainant or her husband has no financial capacity to lend such huge loan. Hence, she has not lent any loan to the accused. In the cross-examination, the complainant herself has admitted that all the original documents of the accused are given by the accused's sister which shows that accused never issued such documents to the complainant. The complainant has not signed on loan agreement, because she is not aware of the transaction in question.

24. He argued that in the legal notice the advocate's registration number is not mentioned as per Advocate’s Act, mentioning of registration number is mandatory, hence the said legal notice is invalid. Since the sister of the accused has filed cheque bounce case against the sister of the complainant, out of that grudge, this case has been lodged, hence he prays to acquit the accused.

25. I have meticulously gone through pleadings and evidence placed on record. At the outset, the accused has not disputed his signatures on the disputed cheques marked at Exhibit P1 and Exhibit P2. On perusal of the same, it is evident that both cheques stand in the name of the accused and as per Exhibit P3 and Exhibit P4 bank memos, the cheques got dishonoured for the reason funds insufficient. Therefore, The complainant has prima-faciea proved that cheques belong to the account of the accused and they are duly signed by the accused.

26. Therefore, initial presumption U/Sec.118 and 139 of NI Act has to be drawn in favour of the complainant as the Honorable Supreme Court of India in

"Triyambak S Hegde v Sripad" (2022) 1 SCC 742 while relying upon the the constitution bench judgment of Basalingappa v Mudibasappa (2019) 5 SCC 418, under para 14 of its judgment reiterated that

> "once the cheque was issued and that the signatures are upon the cheque are accepted by the accused, the presumptions undee Sec 118 and 139 of the NI Act arise against the accused. That is, unless the contrary is proved, it shall be presumed that the cheques in question were drawn by the accused for a consideration and that the complainant had received the cheque in question in discharge of debt/liability from the accused."

27. Therefore, as per Sec.118 and 139 of NI Act initial presumption has to drawn infavour of the complainant that cheques were issued in discharge of legally enforceable debt. The burden lies on the accused to rebut the said initial presumption on the scale of preponderance of probabilities.

28. In nutshell case of the complainant is that her husband has lent a loan of Rs 20,00,000 to the accused by way of cash, by pledging her old ornaments. To discharge the said loan, the accused has issued the disputed cheques. But both the cheques were disnoured for the reason funds insufficient. After service of legal notice, the accused has given untenable reply, but failed to return back the amount. Hence the complainant constrained to file this case.

29. As per the pleadings, the husband of the complainant by name Sri Anand has committed suicide and cross examination of PW1 shows that there is an allegation of having illicit relationship between the sister of accused by name Smt Shweta and the husband of the complainant. However, having regard to the limited scope of the present case, this Court is of the considered opinion that it cannot travel beyond the pleadings to record any findings with respect to the alleged suicide of the complainant's husband or the alleged illicit relationship referred to above.

30. In **Shankar Lal V Sanyogita Devi (Dead) Through Lrs CRIMINAL APPEAL NO. 485 OF 2002**, Apex court clearly observed that

> "In Muthuveeran Chetty Vs. Govindan Chetty1 a Full Bench of the Madras High Court observed that a person to whom the property in the negotiable instrument stands transferred by operation of law is entitled to sue on the note as such. It was held that the property in the promissory note can devolve upon the legal heirs of the

> deceased payees on the operation of law and that the absence of any endorsement or assignment did not affect the claim of the person suing. It was further held that "it is not necessary for the person suing on the promissory note to rely only on an endorsement or such other mode as is provided for in the Negotiable Instruments Act and the suit by a person on whom the right devolves by operation of law cannot be defeated by absence of the endorsement.
>
> There is no provision in Negotiable Instruments Act prohibiting the legal heirs to file the complaint under Section 138 of the Act. The legal heirs of the holder in due course of the cheque are clearly entitled to rely upon the instrument and there is no provision in the Act which stands in the way of legal heirs initiating proper and appropriate proceedings as they step into the shoes of the original holder in due course of the cheque."

31. The principle laid down in above case law directly applicable to this case. Hence, even though transaction in question is done by the husband of the complainant , being legal heir the complainant is entitled to file this compliant. The legal heirs of the holder in due course of the cheque are clearly entitled to rely upon the instrument. The instant case is filed stating that cheque is issued in the name of the complainant for repayment of loan given by her husband to the accused. Thus it is very well maintainable.

32. Though accused has disputed acquaintance between himself, and the complainant and her husband in his chief examination, in the reply notice given by the accused marked at Exhibit P9, in Para No. 3, accused has unequivocally admitted that he knows the husband of the complainant by name Mr Anand. He has stated that there was some transaction between himself and Anand and in that regard said Anand had issued a Cheque No. 00005 drawn from Kottak Mahindra Bank, Banashankari 3rd Stage Branch, Bengaluru and before depositing the said cheque to the bank, said Anand expired. Further it is also requested the complainant to return back the LIC policies and cheques received from one Ganesh Achara.

33. In the chief examination, the accused has deposed that when he received the legal notice, from the complainant, he got to know about the presentment of the cheques and in that connection, he has issued a reply through his counsel to the complainant. Therefore, it is evident that accused is aware of the fact that he has issued a reply notice through his counsel. If at all he is not aware of the complainant or her husband, in the reply notice, he ought to have mentioned that complainant and her husband are strangers to him. But he has clearly mentioned that he knows the deceased Sri Anand, which shows that accused is acquainted with the complainant and her husband. But during the chief examination he has deposed that he doesn't know the complainant and her husband. Therefore his own document marked at Exhibit P9 ie reply notice, falsifies the statement of the accused that he is not acquainted with the complainant and her husband. Thus acquaintance between parties is proved.

34. It is the case of the complainant that her husband has paid Rs 20,00,000 to the accused by way of cash. The accused has disputed the financial capacity of the complainant and her husband and asked series of question to PW1 in her cross examination. PW1 in her cross-examination has deposed that about 3 years back she has purchased the gold ornaments shown in Exhibit P6 and Exhibit P7. She deposed that her mangalya chain, rings, bracelet and necklace and long chains are pledged by her husband to arrange money to the accused. Even she has accompanied her husband while pledging the said gold ornaments. She further deposed that from her and her husband's savings, she has purchased those gold ornaments from one Vajram gold shop situated in Vijayanagara. She denied the suggestion that she has pledged those gold ornaments to repay her loans. She denied that she has no financial capacity to lend such loan to the accused.

35. Therefore, having scrutinized the entire cross-examination of PW1, it is evident that she has consistently deposed that her husband has pledged her gold and he has sufficient income and her husband has given loan to the accused. Nothing worth is elicited from the mouth of PW1 to suspect the financial capacity of her husband.

36. It is significant to note here that as the accused admits his signature on the cheques, complainant has privilege of initial presumption that the cheques are drawn for consideration and therefore even in the absence of documentary proof for having advanced the loan of Rs.20 lakh to the accused, the Court shall initially believe that the consideration has been passed to the accused and unless and until the accused rebuts the said presumption on the scale of preponderance of probabilities, the complainant cannot be called upon to prove her case further.

37. In **AIR 2023 SC 5018** in between **Rajesh Jain V/s Ajay Singh,** Apex court held that

> “ 31. Presumption, on the other hand, literally means “taking as true without examination or proof”. In Kumar Exports v. Sharma Exports, this Court referred to presumption as "devices by use of which courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence.”

38. As per principle laid down by apex court, unless and until the accused rebuts the this initial presumption on the scale of preponderance of probabilities, onus doesn't shifts back on the complainant. Even otherwise PW1 has produced documentary evidence and substantiated that her husband has financial capacity to lend loan.

39. Per contra, the only defence taken by the accused is that he has not handed over the property documents and LIC bonds in favour of the complainant, when he was sick, his sister visited his house, took his documents and she has handed over those documents to the complainant.

40. Firstly, the accused has not given any proper explanation as to why his sister has given the original documents of his property as well as LIC documents in favour of the complainant or her husband. The circumstances surrounding the handing over of these documents and the delivery of the original title deeds clearly require an explanation from the accused. Without there being any transaction, no prudent person would have handed over all original LIC bonds, property documents and also additionally execute the loan agreement and consent agreement. It is the bounden duty of the accused to explain what made him or his sister to hand over such documents to complainant and her husband and execute loan agreement. However no plausible explanation is given by the accused. Such nexus itself is not shown by accused.

41. Secondly the accused has failed to examine his sister before the court for the reasons best known to him. The accused has not taken any such contention that the relationship with his sister has been strained. When such being the case why the sister of the accused has taken the documents of the accused including the disputed cheques without to his knowledge and handed over the same to the husband of the complainant itself is not explained.

42. The complainant has produced Copy of the complaint given to the police commissioner on 11.11.2024 as per Exhibit P28 and even the sister of the accused has given a counter complaint against the complainant as per Exhibit P30 where she sought back her brothers documents. Though the contentions taken in both the complaints are out of the scope of this case, ExP30 clearly shows that, sister of the accused is aware that complainant is in possession of all original documents of the accused. When such being the case sister of the accused is a materiel witness and failure to examine her before the court creates doubt about the defence.

43. The complainant has proved her husabnd's source of income to give the loan by producing her gold loan documents as well as loan agreement marked at Ex.P.26 and 27 and sale agreement executed by the accused in favour of her husband.

44. The loan agreement executed by the accused on 14.02.2024 as per Ex.P10, reflects that accused has admitted that he has borrowed a loan of **Rs 15,00,000**

from the husband of the accused by name Sri Anand and he has also clearly mentioned that for the purpose of security, his original LIC bonds were given. Exhibit P11 is the agreement of sale executed by the accused, wherein the sister and wife of the accused have also signed as witnesses in which the accused has agreed that he has received **Rs 5,00,000** from the complainant's husband and executed this agreement of sale for the purpose of security. Therefore, The Exhibit P10 and Exhibit P11 clearly establishes the loan transaction with the accused.

45. No doubt PW1 has deposed in her cross-examination that that she is working as a maid and she earns Rs 15,000 to rs 20,000 per month. She has deposed that her husband was the driver of Ola and Uber and he was also doing business of trading sheeps. To disprove her oral evidence and also ExP10, no contrary evidence is produced by the accused. Indeed Exhibit P10 and 11. Ie loan agreement and consent agreements clearly demonstrate the loan transaction.

46. Interestingly apart from the accused, the sister of the accused by name Shweta, mother of the accused by name Radha and wife of the accused by name Deepti have signed on Exhibit P10 loan agreement. If at all the accused has no transaction with the complainant and the documents were taken by the sister of the accused and handed over to the husband of the complainant, what made the mother and wife of the accused to sign on Exhibit P10 is not forthcoming. Even the accused also not brought his wife and mother before the court to show his bonafide.

47. PW1 has consistently deposed in her cross examination that accused was very much present while executing the loan agreement at ExP10 and agreement at ExP11 in favour of her husband. She has also deposed that while handing over the cheques, also the accused was very much present.

48. No prudent person would keep the signed blank documents without there being any reason. It is incumbent upon the accused to explain in what circumstances his wife and mother have also signed on Exhibit P10 loan agreement. No such acceptable explanation is forthcoming from the mouth of the accused. Under such circumstances this court declines to accept the defence of the accused that without his knowledge his sister has taken the documents from his house and handed over to the complainant.

49. Even if it is assumed that the site documents marked at Exhibit P22 to 24 and LIC bonds marked at Exhibit P12 to Exhibit P20 and Hakku Nevesana Patra at Exhibit P21 have been taken by the sister of the accused and given to the complainant, no explanation is given by the accused regarding why he has signed on a loan agreement at Exhibit P10. PW1 has consistently deposed that accused himself has executed loan agreement in her presence. He himself has issued the cheques to her. PW1 has also deposed that documents were given by Shweta to her and that time accused was present. Mere denial of execution of the loan agreements at Ex.P10 & 11 is not sufficient. Therefore, the defence of the accused that he had no loan transaction with the complainant and her husband cannot be accepted.

50. Further, the learned counsel for the accused elicited in the cross-examination of PW1 that a cheque dishonour case had been filed by the sister of the accused against the sister of the complainant, and PW1 has admitted the same. However, no nexus or relevance between the said case and the present proceedings involving the complainant and the accused has been established. In the absence of any such connection, the said circumstance does not cast any suspicion on the case of the complainant, particularly in view of the documentary evidence ie loan agreement and sale agreement produced on record in support of her claim.

51. Further, the accused has failed to explain as to when he came to know that his sister had allegedly taken his documents and signed cheques without to his knowledge. Even according to his own version, after becoming aware of the same, he did not initiate any legal action against his sister. A mere assertion that he requested his sister to return the documents and cheques is wholly insufficient and appears to be a vague and bald contention raised only to evade liability arising under the cheques in question.

52. The accused has also failed to explain why he had signed the cheques and kept them, along with other documents ie site documents and LIC bonds, in a place where they could be accessed by his sister. He has not disclosed the circumstances under which the cheques and other documents were signed. If, as alleged, his sister had taken the signed cheques without any authority or justification, being prudent person he would have immediately issued stop-payment instructions to the banker or taken other necessary steps to prevent their misuse. However, the accused has admittedly not taken any such action and same creates suspicion about genuineness of the defence put forth by the accused. Accordingly, the defence appears to be vague, untenable and it does not inspire the confidence of the Court.

53. Therefore, having scrutinized the entire evidence, this Court is of the view that the complainant has successfully established the loan transaction in question by producing required amount of documentary evidence as well as her oral evidence.

54. Per contra, it is noticed by the court that the accused has taken different stand at different stages. In the reply, he has stated that his signed cheques were given to one Mr.Ganesh Achar and those cheques were subsequently taken by the complainant. Why did the accused gave his signed cheques to Ganesh Achar? Who is this Mr.Ganesh Achar? What is nexus between said person and motive to hand over cheques to complainant is not forthcoming and accused has not examined the said person before the court. In chief examination accused has not deposed that his cheques were given to this person by name Mr.Ganesh Achar. Per contra counsel for the accused has asked to PW1 whether she can examine said Mr.Ganesh Achar without making suggestion that cheques were allegedly given to Mr.Ganesh Achar by the accused. Thus specific contention of the accused regarding to whom he has issued cheques is not in conformity with Reply notice and evidence.

55. Further, in the cross-examination of PW1 dated 24.06.2005, in Para No. 2, the counsel for the accused has made a suggestion to PW1 that the sister of the accused Shweta, one Chandrakala, Lingaraju and the husband of the complainant were doing financial transaction and PW1 has pleaded ignorance to such suggestion. However, the accused has failed to place any material before the Court explaining the nature of the alleged financial transactions. There is no evidence as to when such transactions commenced, the amount involved, the duration for which they continued. None of them are examined before the court. In the absence of these material particulars and any supporting evidence, the said suggestion remains a mere bald assertion and cannot be relied upon to discredit the case of the complainant. Indeed this court is unable to understand and comprehend the nexus between these persons, the complainant, the transaction in question, and the disputed cheques and accused.

56. Further it is also questioned was there any financial transaction between her husband and Shweta. At one stretch PW1 has deposed she is not aware of such transaction. At another stretch she deposed there were some transactions between them. But no clarity is given either by PW1 or by accused regarding said alleged said transaction. What was such transaction, if existed is also not explained by the accused and no further suggestion was made to PW1 in that regard. Therefore this court declines to accept existence of any such financial transaction between Smt Swetha and the husband of the complainant for want of proof.

57. Thus, upon an overall appreciation of the entire evidence on record, it is evident that, except making suggestions to PW1 during cross-examination, the accused has failed to probabilise his defence. Though, in the reply notice, the accused contended that he had received a cheque in connection with certain transactions with the husband of the complainant, the nature and details of such transactions have not been established before the Court and also said cheque allegedly obtained from the husband of the complainant has not been produced in evidence of the accused.

58. Further, in his examination-in-chief, the accused has not deposed anything regarding any such transaction with the husband of the complainant or about the alleged issuance of cheques through one Mr. Ganesh Achar. Thus, there is a material inconsistency between the defence taken by the accused in the reply notice, his examination-in-chief, and the suggestions put to PW1 during cross-examination. Such contradictory and inconsistent stands weaken the defence and made unreliable. Consequently, the defence put forth by the accused does not inspire the confidence of the Court.

59. Apart from the above contentions, the learned counsel for the accused has argued that the statutory legal notice is invalid on the ground that it does not mention the advocate's registration number. This contention is devoid of merit. It is significant to note that Section 138 of the Negotiable Instruments Act mandates only that, within thirty days from the date of receipt of information regarding the dishonour of the cheque, the payee or the holder in due course shall issue a notice to the drawer demanding payment of the cheque amount. The provision neither mandates that such notice must be issued personally by the complainant or through an advocate, nor prescribes any particular format or contents for the notice. There is also no statutory requirement that an advocate's registration or enrolment number be mentioned in the notice. The very object of issuing a statutory notice prior to the institution of a complaint is to afford an honest drawer of the cheque an opportunity to make good the payment and thereby avoid criminal prosecution. When that is the legislative intent, the mere omission to mention the advocate's registration number in the notice does not, by itself, render the notice invalid or vitiate the proceedings. Accordingly, the contention advanced by the learned counsel for the accused that the statutory notice is invalid for want of the advocate's registration number is not acceptable.

60. Further the learned counsel for the accused has argued loan agreement is not signed by the complainant because she is not aware of loan transaction. When the complainant clearly pleaded as well deposed her husband has lent loan , accused has executed loan agreement at ExP10 acknowledging his liability , merely because complainant has not signed in loan agreement, it cannot be suspected because ,when husband of the complainant was alive said loan agreement was executed. Lender and borrower signatures are materiel to validate the loan agreement. Thus aforesaid line of arguments is devoid of merits.

61. In these circumstances, this Court is of the considered opinion that the accused has utterly failed to rebut the statutory presumptions available in favour of the complainant . On weighing the evidence adduced by both parties, the version of the complainant appears to be more probable and is duly supported by the oral and documentary evidence available on record. With these observations court proceed to answer **POINT NO.I IN THE AFFIRMATIVE.**

62. POINT NO.II:- In view of the reasons assigned in above point, it is ample clear that accused has committed the offence punishable u/s 138 of the Act. A bare reading of sec.138 of the NI Act indicates that the purport of sec.138 is to prevent and punish the dishonest drawers of cheques who evade their liability.

63. The Hon'ble Apex Court in its recent decision in **M/s. Meters & instrument Pvt Ltd. Vs. Kanchana Mehta reported in (2018)1 SCC-560 held at para 18(ii)**

that"(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found."

64. In R. Vijayan vs. Baby and Another reported in AIR 2012 SUPREME COURT 528, Apex court held that

> 'that unless there were special circumstances, in all cases of conviction, the Court should uniformly exercise the power to levy fine up to twice the cheque

amount and keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss, direct payment of such amount as compensation. This Court rightly observed that uniformity and consistency in deciding similar cases by different courts not only increases the credibility of the cheque as a Negotiable Instrument but also the credibility of the Courts of Justice'.

65. M/S Kalamani Tex vs P. Balasubramanian reported in AIRONLINE 2021 SC 82, Apex court reaffirmed aforementioned principle and held that

"20. As regard to the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for dishonour of cheque as well as civil liability for realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the Courts should uniformly levy fine up to twice the cheque amount along with simple interest at the rate of 9% per annum."

66. Therefore, keeping in mind about above principles and having regard to the extent of cheque amount, time from which it is lying with the accused and defense taken by the accused and failure to prove it, length of time taken for adjudicating the matter and keeping in mind the primary object of the provision, this court is of the opinion that, rather than imposing punitive sentence, if sentence of fine of Rs.30,00,000/- is imposed with a direction to compensate the complainant for her monitory loss, by awarding compensation U/Sec.357 of Cr.P.C, would meet the ends of justice. Accordingly, this court proceeds to pass following .....

O R D E R

The accused is found guilty for the offence punishable U/s.138 of Negotiable Instruments Act.

Hence, acting U/sec.255(2) of Cr.P.C, the accused is convicted and sentenced to pay a fine of **Rs.30,00,000/- (Rupees Thirty Lakhs Only)**, in default of payment fine amount, he shall undergo simple imprisonment for **1 year** for the offence punishable under section 138 of N.I.Act.

Out of the fine amount collected from the accused, an amount of **Rs.29,90,000/- (Rupees Twenty Nine Lakhs Ninety Thousand only)** shall be paid to the complainant as compensation U/s.357 of Cr.P.C. and the remaining fine of **Rs.10,000/-** shall be adjusted towards the cost of state expenses.

The bail bonds of the accused shall be in force till the appeal period is over as contemplated under the provisions of Sec.437(A) of Cr.P.C.

Office to supply the copy of the Judgment to the accused forthwith at free of cost.

(Dictated to the Stenographer, typed by her, corrected by me and then judgment pronounced in the open court on this the 1st day of July 2026).

TEJASWINI K M

Digitally signed by TEJASWINI K M
Date: 2026.07.03 15:26:11 +0530

(Smt.Tejaswini K.M),
XVI ACJM, Bengaluru

ANNEXURE

I. List of witnesses on behalf of complainant:

P.W.1: Smt.Geetha

II. List of documents on behalf of complainant:

Ex.P-1 & 2 : Original Cheques.

Ex.P-1(a) & 2(a) : Signatures of the accused.

Ex.P-3 & 4 : Bank memos.

Ex.P-5 : Legal notice.

Ex.P-6 : Postal Receipt.

Ex.P-7 : Track Consignment.

Ex.P-8 : Certificate U/Sec.63-B of Evidence Act.

Ex.P-9 : Reply Notice.

Ex.P9(a) : Postal Cover.

Ex.P-10 : Loan Agreement.

Ex.P-11 : Copy of Agreement.

Ex.P-12 to 20: Copies of LIC Bonds.

Ex.P-21 : Copy of Hakku Niveshana Patra.

Ex.P-22 to 24 : Copies of Absolute Sale Deeds.

Ex.P-25 : Death Certificate of husband of complainant.

Ex.P-26 & 27 : Receipts issued by Mannippuram Finance.

Ex.P-28 : Copy of complaint given by complainant before Police Commissioner.

Ex.P-29 : Acknowledgment issued by police.

Ex.P-30 : Copy of complaint given by complainant before Konanakunte Police.

Ex.P-31 : Copy of statement given by complainant before Konanakunte Police.

Ex.P-32 : Copy of statement given by sister of the accused before Konanakunte Police.

Ex.P-33 : Copy of Requisition before Police Commissioner.

III. List of witnesses for the accused:

D.W.1: Sri.T.K.Vasudev Kamath

IV. List of documents for accused:

Nil

TEJASWINI K M

Digitally signed by TEJASWINI K M
Date: 2026.07.03 15:26:18 +0530

(Smt.Tejaswini K.M),
XVI ACJM, Bengaluru