KABC020071352024

IN THE COURT OF THE JUDGE COURT OF SMALL CAUSES AND A.C.J.M, AT BENGALURU

<u>DATED THIS THE 10th DAY OF JUNE - 2026</u>

<u>PRESENT:</u>

Smt.Nirmala.M.C.,B.Com.,L.L.B .,
JUDGE, COURT OF SMALL CAUSES & ACJM

<u>C.C.No.1747/2024</u>

Complainant: Sri. Ramdas Rao,
S/o. Late B.S. Rao,
Aged about 80 years,
Resident at No.69/70,
1st Floor, 5th Main Road,
Opposite T.R. Mills,
Chamarajpet,
Bangalore – 560 018.

(By Sri.B.Ramakrishnegowda - Adv.)

-Vs-

Accused: Smt. Devika. L,
W/o. Dinesh,
Aged about 40 years,
Residing at No.7,
Gopalakrishna Nilaya,
1st Floor, 2nd Cross,
3rd Main, Jnanaganganagar,
Bangalore – 560 056.

<u>Also at</u>:
Smt. Devika. L,
W/o. Dinesh,
C/o. Hemanth,
Aged about 40 years,
Hemal Enterprises,
No.2, Guru krupa Building,
80 Feet Road, Mariyappanapalya,
Bangalore – 560 056.

(By Sri. Prashanth.S - Adv.)

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<u>J U D G M E N T</u>

This is a private complaint filed by the complainant u/Sec 200 of Cr.P.C. against the accused for the offence punishable u/Sec 138 of Negotiable Instruments Act 1881 (hereinafter referred as 'Act').

2. <u>The case of the complainant in brief is as under</u>:

The accused is known to the complainant and she is a family friend since five years. Under such acquaintance the accused has approached the complainant for the hand loan of Rs.1,50,000/- to meet her urgent family necessity and to clear some hand loans. The complainant has paid sum of Rs.1,50,000/- by cash in the month of January 2023. The accused has agreed to repay the said hand loan the complainant within 3 to 4 months or by the end of May 2023. The accused even after expiry of the stipulated period did not pay the amount, the complainant has approached the accused in the month of June 2023 seeking repayment of his hand loan, but the accused had been delaying to pay the same giving one or the other reasons. Finally after persistent demands and requests made by the complainant the accused issued a cheque bearing No.698423 dated 27.10.2023, sum of Rs.1,50,000/- drawn on State Bank of India, Chamarajpet branch, Bangalore.

3. It is further case of the complainant that, when he presented the said cheque through his banker and the said cheque was dishonoured & returned with an endorsement stating "**Insufficient Funds**" on 30.10.2023.

4. It is further case of the complainant that, he has sent a legal notice through his counsel on 22.11.2023 through Registered post to both the addresses. The notice sent through RPAD to the first address is returned with on 25.11.2023 with the endorsement "Door Locked"/"No such person is found in this address". Even though the accused is residing in the same address she has managed to return the notice with such reason. The notice sent to the second address duly served on 23.11.2023. The said notice sent through RPAD was not returned even to this day. Inspite of issuance of legal notice, accused failed to make payment towards not paid the amount within the stipulated period and he failed to pay the cheque amount. Hence, complainant has filed this private complaint against the accused for the alleged offence punishable U/sec.138 of NI Act.

5. After filing the complaint, cognizance was taken for the offence punishable u/Sec 138 of N.I.Act and the complaint was registered as private complaint. The sworn statement of the complainant was recorded and registered the case as Criminal Case and the process summons was issued against the accused.

6. In response to the summons, the accused has appeared before the court through her counsel and enlarged on bail. The accused is on bail during the trial. As per the directions of Hon'ble Apex Court in a case between **INDIAN BANK ASSOCIATION V/s UNION OF INDIA** in the instant case on the same day of appearance of the accused, the substance of accusation was framed and read over and explained to the accused in the language known to her. The accused pleaded not guilty, but claims to be tried. On the same day statement U/Sec.313 of Cr.P.C was recorded. On the same day

Sworn statement affidavit of the Complainant was treated as chief examination affidavit and complainant himself examined as PW1. The documents which were marked at the time of sworn statement i.e., Ex.P1 to P8 were also considered as documentary evidence to the chief examination. The accused herself examined as DW.1 and got marked Ex.D.1 and closed her side evidence.

7. Heard the arguments of both sides.

8. Now the points that arise for my consideration are as under:

> 1. Whether the complainant proves beyond all reasonable doubt that, the accused had issued cheque bearing No.698423 dated 27.10.2023 for Rs.1,50,000/- drawn on State Bank of India, Chamarajpet Branch, Bengaluru in favour of complainant to discharge his liability and on presentation of the said cheque for encashment, the same was returned as "**Funds Insufficient**" and in spite of issuance of notice, the accused failed to pay the cheque amount within the statutory period and thereby

committed an offence punishable u/Section 138 of N.I.Act?

2. What order?

9. My answer to the above points for my consideration are as under:

Point No.1: In the **Affirmative;**

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

R E A S O N S

10. POINT NO.1: It is the specific case of the complainant that, the accused has approached the complainant for the hand loan of Rs.1,50,000/- and the complainant has paid sum of Rs.1,50,000/- by cash in the month of January 2023. The accused has agreed to repay the said hand loan the complainant within 3 to 4 months or by the end of May 2023. The accused even after expiry of the stipulated period did not pay the amount, the complainant has approached the accused in the month of June 2023 seeking repayment of his hand loan, but the accused have been delaying to pay the same giving one or the other reasons. Finally after demands and requests made by the complainant the accused issued a cheque. On presentation of said cheque which was dishonoured & returned with an endorsement stating "**Insufficient Funds**" on 30.10.2023. Thereafter complainant issued the legal notice, inspite of issuance of notice, the accused failed to make payment. Hence, complainant filed the private complaint for the offence punishable U/Sec.138 of NI Act.

11. I have perused all the materials available on record with cautiously. As stated above, in order to prove the guilt of the accused, the complainant himself examined as PW1 and got marked Ex.P1 to P8. The PW1/ complainant has filed affidavit in lieu of chief examination and reiterated all the facts mentioned in his complaint.

The Ex.P.1 is the Cheque, Ex.P.1(a) is the signature of accused, Ex.P.2 is the Bank Endorsement, Ex.P.3 is the office copy of legal notice, Ex.P.4 and 5 are the Postal receipts, Ex.P.6 is the Postal cover, ExP.6(a) is the notice inside Ex.P.6, Ex.P.7 is the complaint given to the post office and Ex.P.8 is the Track consignment.

12. The learned counsel for complainant has argued the case and submitted that accused has committed an offence punishable u/Sec.138 of N.I Act by issuing bounced cheque, thus accused is liable to be convict for the offence punishable U/sec.138 of N.I Act by imposing the cheque amount.

13. Per contra, the learned counsel for accused has vehemently argued that accused has not at all committed any offence as alleged by the complainant. Thus he, requested for acquittal of the accused. In support of his defence arguments, he relied upon the oral and documentary evidence available on record. The accused herself examined as DW1.

14. Before discussion of case of the complainant, it is better to have important ingredients as contemplated under the Act, which constitute the offence punishable u/Sec 138 of the said Act which reads as under:-

> a) The cheque has been presented to the bank within a period of 3 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 30 days) of the receipt of information from 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 15 days of the receipt of the said notice.

15. It is significant to note that once the complainant has complied the provisions as contemplated U/Sec.138 of NI Act before filing the case, then the presumption would be raised in favour of complainant as per Sec.139 of NI Act that the cheque in question was issued for discharging the debt or liability in whole or part payment. The debt means legally recoverable debt. Before raising such presumption in favour of complainant, it is to be relevant to discuss whether complainant has complied with all the ingredients before filing the complaint. On perusal of document Ex.P1 to 8, which disclose that the complainant has presented the cheque within limitation and issued the legal notice and filed the private complaint. These documents also goes to show that the complainant has complied all the ingredients as contemplated U/Sec.138 of NI Act before filing the complaint. When complainant complied the provisions to constitute offence punishable U/Sec.138 of NI Act, then comes into picture in favour of complainant to raise the presumption that the accused has issued cheque in order to discharge her debt or liability. It is settled principles of law that the aforesaid presumption is a rebuttable presumption and accused can rebut said presumption by raising probable defence or by relying materials available on record.

16. Perused the record, it is not in dispute that the accused and complainant are well known to each other. It is also not in dispute that, the disputed cheque and signature on the cheque belongs to the accused. It is also not in dispute regarding issuance of cheque in favour of complainant. In the present case, complainant contended that, accused has borrowed the loan of Rs.1,50,000/- but on the other hand, accused has taken the defense that, about 4 years back she has borrowed only of Rs.40,000/- out of that she has repaid Rs.20,000/- to the complainant. Hence, she is liable to pay only of Rs.20,000/-. Even though, complainant has failed this complaint for Rs.1,50,000/-. Therefore, in the present case, there is no dispute regarding financial transaction between the accused and the complainant, only dispute is quantum of amount therefore, we have to see whether the complainant proves that, accused has borrowed loan of Rs.1,50,000/- and issued the disputed cheque for legally recoverable debt.

17. It is the case of the complainant that, accused approached the complainant of ₹1,50,000/- to meet her family necessity and to clear some hand loans. Further, accused agreed to repay the same within a period of 3 to 4 months or by the end of May 2023. After completion of stipulated period, accused failed to pay the said loan amount, therefore, complainant demanded to repay the said loan amount. At that time accused has issued the disputed cheque to discharge her liability. But when the complainant presented the said cheque, the same has been dishonored with endorsement as "Insufficient funds". In order to prove his contention, the complainant filed affidavit in lieu of examination-in-chief, wherein he reiterated all averments of the complainant and examined as PW1 and he produced documents such as cheque, bank endorsement, legal notice, postal receipts, postal cover, complaint which given to post office and track consignment which are marked as Ex.P1 to P8. Thereafter PW1 subjected to cross examination. The learned counsel for the accused cross examined PW1, but he has not elicited from the mouth of the complainant to disbelieve his version. PW1 clearly deposed that accused has borrowed a loan of ₹.1,50,000/- and issued the disputed cheque for legally recovered debt.

18. On the other hand, in order to rebut the presumption arise in favour of the complainant, accused herself examined as DW-1 wherein she has taken the defence that, about 4 years back she has borrowed only of Rs.40,000/- out of that she has repaid Rs.20,000/- to the complainant. Hence, she is liable to pay only of Rs.20,000/-. It is clearly denied by the complainant/ PW.1 when the complainant denied the defense of the accused, it is the burden of the accused to prove the same through cogent oral and documentary evidence. In support of her contention, she has produced one document which is marked at Ex.D.1. Perused the same, it is acknowledgment issued by the Gnanabharathi police station dated 04.01.2026. It reveals that, accused has lodged the complaint against the complainant wherein stated that, she has borrowed only Rs.40,000/- out of that she has paid Rs.20,000/- and she requested the time from the complainant to repay the remaining amount but complainant refused the same and he has filed false complaint against her in CC No.1747/2024. But above said document shows that, after filing of this present complaint, after thought accused has lodged complaint against the complainant. Therefore, the above document is not sufficient to believe the defense of the accused that, she has borrowed only of Rs.40,000/- out of that, she has paid Rs.20,000/-. Further, except the Ex.D.1 accused has not produced any other oral or documentary evidence to prove her defense. In the absence of documentary evidence, mere testimony of the accused is not sufficient to believe her defense that she has borrowed only of Rs.40,000/- out of that she has paid Rs.20,000/-.

19. It is another defense of the accused that, notice has not served upon her. In this regard, perused the record, Ex.P.3 is the notice, Ex.P.4 and 5 are the postal receipts, Ex.P.6 is the postal cover, Ex.P.6(a) is the notice inside at Ex.P.6, Ex.P.7 is the complaint to the post office and Ex.P.8 is the track consignment. These documents are showing that, complainant has issued the legal notice to the address of the accused through RPAD. Perused the cross examination of the DW.1 wherein she clearly admitted that -

> "ನಾನು ಪಿವಿಪಿ ಶಾಲೆಯ ಬಳಿ ವಾಸವಾಗಿರುತ್ತೇನೆ, ನನ್ನ ಮನೆಯ ನಿರ್ದಿಷ್ಟ ವಿಳಾಸ ನನಗೆ ಹೇಳಲಾಗುವುದಿಲ್ಲ. ನಿ.ಡಿ.1 ರಲ್ಲಿನ ವಿಳಾಸ ನನ್ನದಾಗಿರುತ್ತದೆ. ನಿ.ಡಿ.1 ರಲ್ಲಿ ನಮೂದಾಗಿರುವ ನಿಮ್ಮ ವಿಳಾಸ ಹಾಗೂ ಪಿರ್ಯಾದಿನಲ್ಲಿ ನಮೂದಾಗಿರುವ ನಿಮ್ಮ 1 ನೇ ವಿಳಾಸ ಎರಡೂ ಒಂದೇಯಾಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ. ಪಿರ್ಯಾದುದಾರರು ನಿ.ಡಿ.1 ರಲ್ಲಿನ ವಿಳಾಸಕ್ಕೂ ಸಹ ನೋಟೀಸು ನೀಡಿದ್ದು ಸದರಿ ನೋಟೀಸು ಡೋರ್ ಲಾಕ್ ಎಂಬ ಹಿಂಬರಹದೊಂದಿಗೆ ಹಿಂದಿರುಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿ, ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ಆ ವೇಳೆಯಲ್ಲಿ ನಾವು ಮನೆಯಲ್ಲಿ ಇರಲಿಲ್ಲ."

As above accused clearly admitted the address mentioned in the complaint as well as Ex.D.1 are one the same she is residing in the address mentioned in the Ex.D.1. Therefore, when the complainant issued the legal notice to the correct address of the accused, it is sufficient. Therefore, at this juncture this court has relied upon the decision reported in **(2008) 8 SCC 529** in between **Indo Automobiles Vs. Jai Durga Enterprises and others**, wherein it is held that –

> *“ Negotiable Instruments Act,1881 – S.138 – Notice – Service – Requirement of - Notice sent to respondents through registered post and under a certificate of posting to their correct address – High Court quashing the proceedings on ground that because of the endorsement of postal peon, the service could not be said to have been effected – Held, High Court was not justified in so holding – Further held, it is well settled that once notice has been sent by registered post with acknowledgment due to a correct address, it must be presumed that the service has been made effective – Impugned order set aside and proceedings under Sec.138 restored - Criminal Procedure Code, 1973, S.482.”*

20. The above decisions is aptly applicable to the present facts and circumstances of the case. Though the accused has taken the defence that legal notice has not been served upon her but, it is not the defence of the accused that the address mentioned in the notice, as well as the cause title of the complaint not belongs to her. She clearly admitted that, the address mentioned Ex.D.1 and cause title of the complaint are one and the same. Further Ex.D.1 shows that, accused is residing at address mentioned in the Ex.D.1. In the present case, complainant has issued the legal notice to the correct address of the accused mentioned in the cause title. Therefore, as per above decision when the complainant issued the legal notice to the correct address of the accused by registered post with acknowledgment due, it is presumed that the service of the notice has been made effectively. Therefore, the defence of the accused is not believable that notice has not served upon her.

21. The Learned counsel for the accused argued that, complainant himself fill-up the disputed cheque and filed false complaint. In this regard, he drawn the attention of DW.1. On the other hand, the Learned counsel for the complainant denied the arguments of the accused. In this regard, perused the record, the Learned counsel for the accused cross examined the PW.1 but he has not put a single question that, complainant himself filled the disputed cheque. But during the cross examination of DW.1, the Learned counsel for the complainant suggested that, you have borrowed the loan and issued the disputed cheque for legally recoverable debt of Rs.1,50,000/-. In this regard, DW.1 deposed that, she has issued signed blank cheque, complainant himself filled the disputed cheque. Therefore it is necessary to reproduce the Section 20 of the NI Act 1881 for better understanding-

> **"Section-20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby**

gives prima-facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder".

22. As per above provision even an incompleted cheque handed over to the holder of the cheque gives a complete authority to the holder to fill up the cheque. In the present case, as per disputed cheque, complainant is the holder of the cheque. According to the accused, in case if she handed over the signed blank cheque without mentioning the date and name of the complainant, as per above provision, though the accused has issued the incomplete cheque, the complainant is having right to fill up the cheque which was issued by the accused. Therefore, though the accused has taken the defence that, she has not mentioned the date and name of the complainant in the disputed cheque, as per above provision, holder of the cheque i.e., complainant is having to right to fill-up the disputed cheque. Therefore, the defence of the accused is not sufficient to rebut the presumption arise in favour of the complainant.

23. The complainant has contended that accused has borrowed the loan of Rs.1,50,000 and issued the disputed cheque for legally recoverable debt. In support of his contention he relied Ex.P.1 to Ex.P.8. Ex.P.1 is the disputed cheque it shows that complainant is the holder of the disputed cheque, it presumed that accused has issued the disputed cheque for legally recoverable debt. In the present case, accused clearly admitted that disputed cheque and signature on the cheque belongs to her. But she has taken a defense that, she has borrowed only of Rs.40,000/- out of that, she has paid Rs.20,000/- and she is ready to pay the remaining amount of Rs.20,000/-. But accused failed to prove her defense through cogent oral and documentary evidence. Further, in the present case, as above discussed accused has taken two other defences to rebut the presumptions raised in favour of the complainant but, she has failed to rebut the presumption through cogent, oral and documentary evidence. Mere plausible defences are not sufficient to rebut the presumption. Therefore accused failed to rebut the presumption arise arise in favour of the complainant. The complainant has clearly established his case through oral and documentary evidence that the accused has borrowed the hand loan of Rs.1,50,000/- and issued the disputed cheque for legally recoverable debt. Therefore, I am of the opinion that complainant has proved beyond all reasonable doubt that the accused has committed an offence punishable U/Sec.138 of NI Act by issuing disputed cheque. Hence I answered Point No.1

in the **Affirmative.**

24. **POINT NO.2:** As per above discussions, I proceed to pass the following:

ORDER

Acting under Section 255[2] of Cr.P.C, the accused is hereby convicted for the offence Punishable U/s. 138 of the N.I. Act.

The accused is sentenced to pay total fine amount of Rs.1,60,000/-. In default of payment of fine amount, the accused shall under go Simple Imprisonment for a period six months.

After deposit of fine amount of Rs.1,50,000/- shall be paid to the Complainant as compensation as provided U/s.357(1) Cr.P.C. The remaining amount of Rs.10,000/- to be appropriated to the state as fine.

It is made clear that in view of Sec.421(1) of Cr.P.C even if the accused undergoes the default sentence imposed above, accused is not absolved of liability to pay the fine amount.

The bail bond of the accused is hereby stand canceled.

Office is directed to furnish free copy of this judgment to the accused.

(Dictated to the Stenographer directly on computer, typed by her and corrected then pronounced by me in the open court on this the **10th day of June, 2026.**)

(Smt. Nirmala.M.C)
Court of Small Causes,
Judge & ACJM, Bengaluru.

ANNEXURE

LIST OF WITNESSES EXAMINED FOR COMPLAINANT:

PW1 - Sri. Ramdas Rao

LIST OF WITNESSES EXAMINED FOR ACCUSED:

DW1 - Smt. Devika.L

LIST OF DOCUMENTS EXHIBITED FOR COMPLAINANT:

Ex.P1 - Cheque

Ex.P1(a)	-	Signature of accused
Ex.P2	_	Bank Endorsement
Ex.P3	-	Legal notice
Ex.P4&5	-	Postal receipts
Ex.P6	-	Returned postal cover
Ex.P6(a)	-	Notice inside Ex.P6
Ex.P7	-	Complaint given to post office
Ex.P8	-	Track consignment

LIST OF DOCUMENTS EXHIBITED FOR ACCUSED:

Ex.D1	-	Acknowledgment by Gnanabharati Police station

(Smt. Nirmala.M.C)
Court of Small Causes,
Judge & ACJM, Bengaluru.

NIRMALA M C

Digitally signed by NIRMALA M C
Date: 2026.06.10 17:21:38 +0530