KABC020312802023

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

DATED THIS THE 20th DAY OF JUNE - 2026

PRESENT:

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

C.C.No.9319/2022

Complainant: Smt.Manjula H.S
Aged about 39 years
W/o S.Bhaskar
87, 3rd cross, 4th main
Srinivasa Nagara
Bengaluru-560050.

(By Sri.A.S.Brinda - Adv.)

-Vs-

Accused: Manjunatha S
Aged about 36 years
S/o Srinivasa S
#82/2, Gandhadha Gudi Road
Near Ganesha Bhava Hanumantha Nagara
Sunkakenahalli
Bangalore-560019.

(By Smt. Bhagyalakshmi S. - Adv.)

// J U D G M E N T //

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>:

Complainant and accused were acquainted to each other since several years. The accused to settle his credit card dues/payments/commitments, based on the said acquaintance the accused sought for hand loan/financial help of Rs.6,50,000/- during the January 2022 and accused assured the complainant that he shall repay the amount within a year. The complainant paid Rs.3,50,000/- by cash on 10-1-2022 and Rs.3,00,000/- on 20-1-2022 to the accused. The accused had not returned the loan amount to the complainant. The accused had issued a cheque bearing No.183150 dated 18-03-2023 for Rs.3,00,000/- drawn on Federal bank, Basavanagudi branch, Bengaluru-560004 and cheque bearing No.183149 dt.18-03-2023 for Rs.3,50,000/- drawn in Federal bank, Basavanagudi branch, Bengaluru. The complainant presented the cheque bearing No.183149 dt.18-03-2023 for Rs.3,50,000/- to the bank for encashment, but the said cheque returned with endorsement funds Insufficient on 15-4-2022. The complainant issued legal notice dt.26-04-2023 to the accused which was served to him on 28-04-2023. In spite of service of notice accused not paid the cheque amount. Hence, complainant has filed this private complaint against the accused for the alleged offence punishable U/sec.138 of NI Act.

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

5. In response to the summons, the accused has appeared before the court and enlarged on bail. The accused was 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 the substance of accusation was framed and read over and explained to the accused in the language known to him. The accused pleaded not guilty, but claims to be tried. On the same day sworn statement affidavit of complainant was treated as chief examination affidavit and evidence of complainant treated as PW1. The documents which were marked at the time of sworn statement i.e., Ex.P1 to P6 were also considered as documentary evidence to the chief examination. Then the statement of accused as required U/sec 313 of Cr.P.C. was recorded. The accused denied all the incriminating circumstances appeared against him in the evidence to be false. Then accused was permitted to cross examine the PW.1. After completion of evidence of complainant matter posted for defence evidence of the accused and he appeared before the court and got himself examined as DW-1 and got marked Ex.D1.

6. Heard the arguments both sides.

7. I have perused the materials available on record.

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.183149 dt.18-03-2023 for Rs.3,50,000/- drawn in Federal bank, Basavanagudi 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"** on 15-4-2022 and in spite of service 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:-

REASONS

10. **POINT NO.1 :** It is the specific case of the complainant that, complainant and accused were acquainted to each other since several years. The accused to settle his credit card dues/payments/commitments, based on the said acquaintance the accused sought for hand loan/financial help of Rs.6,50,000/- during the January 2022 and accused assured the complainant that he shall repay the amount within a year. The complainant paid Rs.3,50,000/- by cash on 10-1-2022 and Rs.3,00,000/- on 20-1-2022 to the accused. The accused had not returned the loan amount to the complainant and issued the disputed cheque and then complainant presented the same for encashment, but said cheque returned with endorsement with Funds Insufficient. Thereafter, complainant issued the legal notice, but accused either repay the amount or replied the notice. 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 P6. 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 is the Postal receipt, Ex.P.5 is the track consignment and Ex.P6 is the Certificate u/s 65B.

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

13. On the other hand, learned counsel for the accused argued that, accused has not committed any offence stated in the complaint. Hence, he prays to acquit the accused in support of his defence argument he relied upon the oral and documentary evidence available on record.

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 6 which discloses 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 his 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 material available on record. It is also not in dispute, accused and complainant known to each other, it is also not in dispute, disputed cheque and signature on the cheque belongs to the accused. It is also not in dispute that there was a financial transaction in between accused and complainant. In the present case complainant contended that he lend the total amount of Rs.6,50,000/- and accused issued two cheques bearing No.183150 of Rs.3,00,000/- dated 18.03.2023 and another cheque bearing No. 183149 of Rs.3,50,000/- dated 18.03.2023 out of that accused is presented the disputed cheque. But on the other hand accused has taken defence that he has borrowed total Rs.8,50,000/- out of that he has paid Rs.3,50,000/- and he is liable to pay only of Rs.5,00,000/-. But complainant threatened him and got two cheques of Rs.3,00,000/- and Rs.3,50,000/- respectively. Therefore, in the present case there is no dispute regarding the financial transaction. Only dispute is quantum of amount. Therefore, we have to see whether the complainant lend the amount of Rs.6,50,000/- and accused issued the disputed cheque for legally recoverable debt or not.

17. The complainant contended that, accused has borrowed the hand loan of Rs.6,50,000/-. Further contended that accused has issued the disputed cheque for legally recoverable debt. In support of his contention, he has filed affidavit in lieu of examination in chief, wherein he re-iterated all averments of the complaint and himself examined as PW.1 and produced the 6 documents, which are marked as Ex.P.1 to P.6. Thereafter PW.1 subjected to cross-examination, the learned counsel for the accused cross-examined PW.1, but nothing has been elicited from the mouth of the PW.1 to disbelieve his version. PW.1 clearly deposed that accused has approached him for hand loan and accused has issued the disputed cheque in his favour for repayment of said loan amount. Therefore, though the accused has tried to rebut the version of the PW.1 by way of cross-examination but, he has not succeed in it. PW.1 clearly deposed that accused has borrowed the hand loan and issued the disputed cheque for legally recoverable debt.

18. In the present case, in order to rebut the presumption arise in favour of the complainant, accused has taken defence during the defence evidence that he has borrowed total amount Rs.8,50,000/- out of that he has paid Rs.3,50,000/- and he is liable to pay only of Rs.5,00,000/-. But complainant threatened him and got two cheques of

Rs.3,00,000/- and Rs.3,50,000/- respectively. It is denied by the complainant, when the complainant denied the defence of the accused it is the burden upon the accused to prove the same through cogent documentary evidence. But accused has not produced any document to prove his defence. Perused the cross examination of PW.1 the learned counsel for the accused cross-examined the PW.1 but he has not put a single question or suggestion that accused borrowed amount of Rs.8,50,000/- out of that he has paid Rs.3,50,000/- and he is liable to pay only of Rs.5,00,000/-. In case is defence is prove accused had to raise his defence during the cross-examination of the PW.1, but accused has not made any effort. Hence, in the absence of mere plausible defence or explanation is not acceptable.

19. Further, accused has taken another defence that complainant has threatened him and got two cheques of Rs.3,00,000/- and Rs.3,50,000/- respectively. It is denied by the PW.1, perused the cross examination of PW.1 wherein learned counsel for the accused suggested that "ಆರೋಪಿಗೆ

ಪರ್ಸನಲ್ ಲೋನ್ ಮಾಡಿಸಿಕೊಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿ ಅವರಿಂದ ಸಹಿ ಮಾಡಿದ 2 ಖಾಲಿ ಚೆಕ್ಕುಗಳನ್ನು ಪಡೆದು ಅವುಗಳನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ಸುಳ್ಳು ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ". The above defence of the accuse is contrary to the defence taken in his defence evidence. Once accused has taken defence that complainant threatened him forcebally he has taken alleged cheque. But, during the cross examination he has taken defence that complainant has told him to get personal loan and received two signed cheque. Like this accused has taken two different defence, but he has failed to prove the same to cogent documentary evidence. Hence, in the absence of evidence the defence of the accused is not acceptable.

20. Further the learned counsel for the accused argued and same defence taken during the cross examination of PW-1 that complainant himself fill-up the disputed cheque. In this regard, draw the attention of cross-examination of PW-1. Perused the same, wherein the learned counsel for the accused suggested that you have fill-up the disputed cheque.

It is denied by the PW-1, 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".**

21. As per above provision even an incomplete 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 he 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, he 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.

22. The complainant has contended that accused has borrowed the loan of Rs.6,50,000/- and issued the disputed cheque for legally recoverable debt. Ex.P.1 is the disputed cheque it shows that complainant is the holder of the disputed cheque, it is 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 him. But, he has taken several defences during the cross examnation of PW-1 to rebut the presumptions raised in favour of the complainant but, he has failed to rebut the presumption through cogent, oral and documentary evidence. Mere plausible defences are not sufficient to rebut the presumption. The complainant has clearly established his case through oral and documentary evidence that the accused has borrowed the hand loan and issued the disputed cheque. 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.**

23. **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.3,60,000/-. 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.3,50,000/- 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 cancelled.

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 **20th day of June, 2026.**)

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

ANNEXURE

LIST OF WITNESSES EXAMINED FOR COMPLAINANT:

PW1 - Manjula H.S.

LIST OF WITNESSES EXAMINED FOR ACCUSED:

DW1 - Manjunatha S.

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	-	Postal receipt
Ex.P5	-	Track consignment
Ex.P6	-	Certificate u/s 65B

LIST OF DOCUMENTS EXHIBITED FOR ACCUSED:

Ex.D1	-	CC No.24541/2024 order sheet, FIR, charge sheet

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

NIRMALA M C

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Date: 2026.07.10 12:54:57 +0530