KABG410001802025

IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND JMFC COURT, CHIKODI

PRESENT: SRI. ZAHEER ATANUR
B.Sc,LL.B.,
I Addl.C.J & JMFC, Chikodi

Dated this the 01st Day of August, 2026

C.C No.57/2025

Complainant	The Manager State Bank of India Branch: Shamanewadi R/by its Manager, Smt. Arpita Rajendra patil Age:35 Years, Occ: Service Tq: Chikodi, Dist: Belagavi.
Represented by	**J.T.B Advocate**
Accused	M/s. Vedant Enterprises Prop: Mr. Kishor Madhukar Fakire, Age: 44 years, Occ: Business R/o. Shamanewadi, Tq: Chikodi, Dist: Belagavi. Pin Code No.591214
Represented by	**J.A.B Advocate**

01	Date of filing of complaint	15-01-2025
02	Name of the complainant	Smt. Arpita Rajendra patil
03	Offences complained of	U/Sec.138 of NI Act.
04	Date of commencement of recording of evidence	16-08-2025
05	Date of closing of evidence	25-06-2025
06	Judgment pronounced on	01-08-2026
07	Duration	Year Month days 01 07 15

Accused Details:

Rank	Name of the accused	Date of Arrest	Date of release on Bail	Offence Charged with	Whether Acquitted or Convicted	Sentence imposed	Period of detention undergone during trail of purpose of section 387 of BNSS
01	Kishor Madhukar Fakire,	---	--	138 of NI Act	Acquitted	----	---

(Zaheer Atanur)
I ADDL. CIVIL JUDGE & JMFC,
CHIKODI.

J U D G M E N T

This private complaint is filed by the complainant Bank U/Sec.200 of CrPC/223 of BNSS against the accused for the offence punishable under Sec.138 of N.I. Act.

2. <u>In a Nutshell the facts of the case are as follows:-</u>

It is the case of the complainant bank that the accused is Entrepreneur of Vedant Enterprises and he is engaged in Tissue Paper Manufacturing Business at Shamanewadi. On 27-12-2022 the accused borrowed loan of Rs.7,75,000/- from complainant bank, under Term Loan A/c No.41631825952 for said business and executed the documents by agreeing to repay the loan. But accused failed to repay the same within stipulated period and in order to repay the said legally recoverable debt, accused had issued a cheque bearing No.388281 dated 16-11-2024 in favour of complainant Bank for a sum of Rs.7,53,049/- (inclusive of interest) drawn on SBI Bank, Shamanewadi Branch then complainant Bank has presented the said cheque for encashment to SBI Bank, Shamanewadi Branch. On 16-11-2024, complainant bank present the cheque for encashment and it was dishonored with an endorsement **"Funds Insufficient"** on same day, then the same is informed to accused wherein the accused requested the complainant Bank to wait for 15 days for arrangement of due amount, believing the words of accused complainant bank waited for more than 15 days, as the accused failed to keep up his words, the complainant bank has again presented the said cheque on 02-12-2024 which was dishonored for same reason. Thereafter the complainant bank issued legal notice to accused on 04-12-2024 calling upon to make payment of the cheque amount. The notice was served upon accused on 07-12-2024. However, the accused has not replied to the said notice nor he has repaid the loan amount. Thereby it is alleged that the accused has committed an offense punishable under section 138 of the Negotiable Instruments Act and the complainant is constrained to file this complaint.

3. After filing of complaint, sworn statement of the complainant is recorded by my Learned Predecessor and cognizance is taken of the offence punishable U/Sec.138 of Negotiable Instruments Act. Hence, the criminal case is registered and summons issued to the accused.

4. In response to the summons, the accused appeared through his counsel and is enlarged on bail. The substance of accusation is framed, read over and explained to the accused in the language known to him. Having understood the substance of accusation, the accused pleaded not guilty and claimed to be tried.

5. In order to prove the complaint averments, Bank Manager of complainant bank has sworn to her affidavit in lieu of examination-in-chief and got examined herself as CW-1 and produced 09 documents which are marked as Ex.C-1 to Ex.C-9 and she was subjected to cross-examination by learned counsel for accused. Thereafter evidence on complainant side is closed.

6. The statement of accused U/Sec.313 of Cr.PC/351 of BNSS is recorded, the incriminating circumstances appearing against the accused is read over and explained in the language known to him. Having understood the contents of statement, the accused denied the allegations in toto and led evidence on his behalf. Accused has furnished his surety in compliance of section 437A of CrPC/481 of BNSS.

7. The accused examined himself as DW-1, led his examined-in-chief and cross-examined by the counsel for complainant. Ex.C10 and C11 are marked on confrontation.

8. Heard arguments of learned counsel for complainant and the accused at length. He has vehemently argued that the accused borrowed the loan of Rs.7,75,000/- and failed to repay the same. Thereafter issued cheque which is dishonored, thereby committed the offence under section 138 of NI Act. Further the accused has failed to rebut the presumption under section 139 of NI Act, even by way of leading the defense evidence, the accused has not led cogent and reliable evidence which would falsify the case of the complainant. On these contentions, the counsel for complainant prays to convict the accused.

9. On the other hand, learned counsel for accused has refuted the allegations of complainant and argued that the complainant is known to the accused, The accused deposed that he had applied to the KVIC in December 2022 under the employment scheme and was subsequently sanctioned a loan of Rs.7,75,000/- under the Prime Minister's Employment Generation Programe (PMEGP), out of which Rs.3,14,500/- was subsidy with interest at 4% per annum was payable only on the remaining loan amount. He stated that he purchased a tissue paper manufacturing machine and commenced his business. He further contended that he had not furnished any security or guarantor for the loan except executing a bond. He further contended that the complainant bank, instead of deducting the subsidy amount, charged interest on the entire loan of Rs.7,75,000/-, due to which he paid approximately Rs.20,000/- as excess monthly installments. Despite his requests to charge interest only on the balance loan amount, the bank did not accede to his request. He stated that he has repaid about Rs.5,62,000/- and that only about Rs.1,68,000/- is outstanding, which he is willing to repay. He further stated that the loan tenure extends up to the year 2029 and, despite seeking time to repay the balance amount, the complainant initiated the present proceedings. He also denied having issued any cheque to the complainant bank. Further to rebut his presumption under Section 139 of NI Act, the accused has entered into witness box, examined as DW1 and cross-examined by the counsel for complainant. During his cross-examination, the accused/DW1 remained un-impeached. Therefore, the accused has sufficiently rebuted the presumption. Hence the counsel for accused prays to acquit the accused.

10. Perused oral and documentary evidence available on record.

11. The following points arise for consideration of this court:

<u>POINTS</u>

1. ***Whether the complainant proves that, the accused has issued cheque bearing No.388281 dated 16-11-2024 in favour of complainant Bank for a sum of Rs.7,53,049/- drawn on SBI Bank,***

Shamanewadi Branch towards discharge of the legally recoverable debt or liability and on its presentation the same was dishonoured as "Funds insufficient" and despite of issuance of legal notice the accused failed to pay the cheque amount within the statutory period and thereby committed an offence punishable U/Sec.138 of N.I. Act?

2. What order?

12. My findings on the above points is as follows;

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

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

R E A S O N S

13. **POINT NO.1:** Afore narrated facts are taken for consideration to avoid repetition of facts.

14. In order to substantiate her contention, the Manager of complainant bank sworn to her affidavit in lieu of examination-in-chief, got examined herself as CW1, complaint allegations are reiterated and produced 11 documents as Ex.C.1 to Ex.C.9.

15. Ex.C1 is the Cheque bearing "No.**388281**" dated 16-11-2024 in favour of complainant bank for a sum of Rs.7,53,049/- drawn on SBI Bank, Shamanewadi Branch. Ex.C.1(a) is the signature of accused herein. Ex.C.2 & 3 are the receipts, Ex.C.4 & 5 are the Return Memos which shows that the above mentioned cheque is dishonored on 16-11-2024, and 02-12-2024 due to "Funds insufficient". Ex.C6 is the Legal Notice issued by complainant to the accused. Ex.C7 is the Postal receipt. Ex.C8 is Postal Acknowledgment. Ex.C9 is Track Consignment.

16. Complainant/PW-1 is cross examined by the counsel for accused at length. On the other hand the accused has stepped into witness box and examined himself as DW1 and led his examination in chief, he is cross-examined by the counsel for complainant. Ex.C10 is the Bank Statement, Ex.C11 is Account Statement which are marked on confrontation.

APPRECIATION OF EVIDENCE BY COMPLAINANT SIDE

17. Now, taking note of documents produced and oral evidence adduced by both the side, it is relevant to extract Sec.138 of NI Act which contemplates as under:

> ***138. Dishonour of cheque for insufficiency, etc., of funds in the account.***—*Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:*
> *Provided that nothing contained in this section shall apply unless—*
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*
> ***Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.***

18. It is the specific case of the complainant/CW1 that the accused has obtained loan of Rs.7,75,000/- for buying Tissue Manufacturing Machine from Complainant Bank. It is not the case of complainant that the accused had repaid part loan amount. Thus it is alleged that accused has failed to repay the loan amount. If the principal loan is borrowed for **Rs.7,75,000/-** on **27-12-2022,** then the interest along with the principal amount must have inflated, but the complainant has filed this complaint on 09-01-2025 and alleged that as on **16-11-2024** the accused is liable to pay **Rs.7,53,049/- (inclusive of interest).** If at all the accused has not repaid the loan amount then, the principal amount along with interest ought to have been more than Rs.7,75,000/-. No reason is assigned by the complainant for claiming lesser amount.

18.1 Further in her cross-examination CW1 has admitted that the accused is beneficiary of PMEGP Scheme, accordingly the loan is sanctioned to accused under PMEGP Scheme. She has also admitted that the accused is unemployed and poor person due to which loan is sanctioned in his name. So also in para No.3 of her cross-examination she has deposed that accused may have repaid Rs.80,000/-. But denied the suggestion that he has paid Rs.2,47,992/-. Para No.3 of her cross-examination is reproduced as under:

> 3) ಆರೋಪಿಗೆ ಸಾಲವನ್ನು 2022 ಡಿಸೆಂಬರ ತಿಂಗಳಿನಲ್ಲಿ ಮಂಜೂರು ಮಾಡಿರುತ್ತೇವೆ. ರೂ.7,50,000/- ಸಾಲ 7 ವರ್ಷಗಳ ಸಾಲ ಅವಧಿಗೆ ಮಂಜೂರು ಮಾಡಿರುತ್ತೇವೆ. ಸಾಲದ ಅವಧಿ 2029 ರಲ್ಲಿ ಮುಗಿಯುತ್ತದೆ. ಸಾಲವನ್ನು ಪ್ರತಿ ತಿಂಗಳು ರೂ.20,135/- ರಂತೆ ಕಂತುಗಳಲ್ಲಿ ನೀಡಿರುತ್ತೇವೆ. ಆರೋಪಿಯು ರೂ.80,000/- ವರೆಗೆ ಮರು ಪಾವತಿ ಮಾಡಿರಬಹುದು. ಆರೋಪಿಯು ರೂ.2,47,992/- ಮರು ಪಾವತಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

18.2 Further in para No.5 of her cross-examination CW-1 has denied the suggestion that the accused has repaid Rs.2,47,992/- and the government has paid subsidy of Rs.3,14,500 likewise in total the accused has paid Rs.5,62,492/- and remaining outstanding balance is

Rs.1,66,502/-. She has testified that she do not know amount mentioned in Ex.C1.

19. On careful analysis of evidence adduced by CW-1, it is evident that there is no whisper as to claiming lesser amount than principal amount. Secondly, repayment of loan in installment is not averred in the complaint. Thirdly, the complainant has suppressed about sanctioning loan under PMEGP Scheme and the subsidy approved there upon.

APPRECIATION OF EVIDENCE OF ACCUSED/DW1

20. At this stage it is appropriate to extract Section 139 of N.I. Act which reads as follows:

> ***"Presumption in favour of holder****- It shall be presumed, unless the contrary is proved, that the holder of cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part or any debt or other liability".*

20.1. As per section 139, presumption lies in favour of holder of cheque that, he received the cheque for discharge of legally recoverable debt or liability as referred in section 138 of N.I. Act. The accused who is examined as DW1 has let in evidence and in his examination-in-chief he has deposed that he has repaid Rs.5,62,000/- and remaining outstanding balance is Rs.1,68,000/-. He is ready to repay the remaining balance as the scheme is valid up to 2029.

21. The counsel for complainant has cross-examined DW1 wherein he has suggested that the accused has repaid loan in installments on different dates as mentioned in para No.4 and 5 of cross-examination and confronted DW-1 with statement of account marked as Ex.C10. relevant para No.4 and 5 are reproduced as under:

> 4) ರೂ.7,21,000/-ಯಂತ್ರವನ್ನು ಖರೀದಿಸಲು ಮತ್ತು ರೂ.54,000/-ಸಾಮಗ್ರಿಗಳನ್ನು ಖರೀದಿಸಲು ಸಾಲವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಉದ್ಯೋಗವನ್ನು ಪ್ರಾರಂಭಿಸಿದ ನಂತರ ದಿ:28.08.2023 ರಂದು 40,000/-, ದಿ:17.10.2023 ರಂದು ರೂ.44,000/-, ದಿ:30.11.2023 ರೂ .22,000/- ದಿ:20.01.2024 ರಂದು ರೂ 17,192/- ಹಾಗೂ ದಿಃ29-01-2024 ರಂದು ರೂ .5,820 ರೂಗಳನ್ನು ದೂರುದಾರ ಸಂಸ್ಥೆಗೆ ಸಾಲವನ್ನು ತುಂಬಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ಈ ರೀತಿ ನಾನು ಒಟ್ಟು ರೂ.1,76,066/- ಕೊಟ್ಟಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನಾನು ಒಟ್ಟು ರೂ.2,48,000/- ಹಂತ ಹಂತವಾಗಿ ಹಣ ತುಂಬಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ಹಣವು ನನ್ನ ಖಾತೆಯಿಂದ ಸ್ವಯಂವಾಗಿ ಹೋಗಿರುತ್ತದೆ. ಯಾವುದೇ ವ್ಯಕ್ತಿ ಖಾತೆಯಲ್ಲಿ ಹಣ ಠೇವಣಿ ಮಾಡಿದರೆ ಬ್ಯಾಂಕಿನವರು ರಶೀದಿಯನ್ನು ನೀಡುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನಾನು ನನ್ನ ಎಸ್ ಬಿ ಖಾತೆಯ ವಿವರವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ. ಸದರಿ ಖಾತೆಯಲ್ಲಿದ್ದ ದೂರುದಾರ ಸಂಸ್ಥೆಗೆ ರೂ.2,48,000/- ಗಳು ವರ್ಗಾವಣೆ ಆಗಿರುವ ಬಗ್ಗೆ ನಮೂದು ಆಗಿರುತ್ತದೆ. ನಾನು ರೂ.2,48,000/- ಸಾಲವನ್ನು ಮರು ಪಾವತಿಸಿರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.
>
> 5) ಆರೋಪಿಯು ಮರು ಪಾವತಿಸಿದ ರೂ.2,47,992/- ಮತ್ತು ಸರಕಾರದಿಂದ ಬಂದ ಅನುದಾನ ರೂ.3,14,500/- ಸೇರಿ ಆರೋಪಿತನ ಸಾಲದಲ್ಲಿ ಒಟ್ಟು ರೂ.5,62,492/- ಮರು ಪಾವತಿ ಆಗಿರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ರೂ.1,66,502/-ಮರು ಪಾವತಿಸುವುದು ಬಾಕಿ ಇರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅದನ್ನು ಆರೋಪಿಯು ಮರು ಪಾವತಿಸಲು ತಯಾರು ಇದ್ದಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

Now, taking note of documents produced and oral evidence adduced by both the side, it is relevant to extract Sec.56 of NI Act which contemplates as under:

> ***56. Indorsement for part of sum due.***—*No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.*

21.1. Thus, it is crystal clear that by way of confronting statement of accounts as per Ex.C10 and Ex.C11 the complainant bank itself has admitted about repayment of loan amount by the accused in installments. The said fact is suppressed by the complainant in complaint averments. Thus, the instant case is hit by section 56 as held by Hon'ble Supreme Court of India in ***Criminal Appeal No. 1497 of 2022*** between ***Dashtrathbhai Trikambhai Patel versus Hitesh Mahendrabhai Patel & Anr***.

> ***29.*** *Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance*

> *amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment*
>
> *(emphasis supplied)*

22. In the instant case at hand, it is admitted that accused/DW-1 has repaid loan in installment prior to presentation of cheque for encashment, then the complainant bank ought to have complied the provision of section 56 of NI Act, but the same is not done so. Therefore, the accused/DW1 has sufficiently rebutted the presumption by way of leading his evidence. In view of judgment referred *supra*, it appears the complainant bank has suppressed material facts and has not approached this Court with clean hands. Therefore, the consideration amount mentioned in Ex.C1 cannot be termed as legally enforceable debt. Therefore, this Court is of considered view that the offence punishable under section 138 is not attracted against the accused/DW1. Accordingly, this Court answers Point No.1 in the ***Negative***

23. <u>POINT NO.2:</u> For the afore-stated reasons, this court proceeds to pass the following:

<u>O R D E R</u>

Acting U/sec. 278(2) of BNSS,, the accused is acquitted of the offence punishable U/sec.138 of N.I. Act.

The bail bonds executed by accused in compliance of 481 of BNSS shall remain in force till the appeal period is over.

The bail and surety bonds of the accused stands cancelled.

(Dictated to the Stenographer, typed by him, corrected by me and then judgment pronounced in the open court on this the 01st Day of August, 2026.)

(Zaheer Atanur)
I ADDL. CIVIL JUDGE & JMFC,
CHIKODI.

<u>-; A N N E X U R E ;-</u>

<u>LIST OF COURT WITNESS</u>

<u>A. Complainant Witness:</u>

Rank	**Name**	**Nature Of Evidence**
Complainant/PW-1	Smt. Arpita Rajendra Patil	Complainant

B. Defence Witness, If Any:

Rank	Name	Nature of evidence
Accused/DW-1	Mr. Kishor Madhukar Fakire,	Defence Witness

LIST OF COURT EXHIBITS

A. Complainant:

Sr No.	Exhibits Number	Description
1.	Ex.C1/CW-1	Cheque
2.	Ex.C1(a)/CW-1	Signature
3.	Ex.C 2 and 3 /CW-1	Receipts
4.	Ex.C4 and 5/CW1	Return Memo
5.	Ex.C6/CW1	Legal Notice
6.	Ex.C7/CW-1	Postal Receipt
7.	Ex.C8/CW1	Postal Acknowledgment
8.	Ex.C9/CW1	Track consignment
9.	Ex.C10 and 11/CW1	Statement of accounts

B. Defence:

Sr No.	Exhibits Number	Description
	Nil	

ZAHEER ATANUR Digitally signed by ZAHEER ATANUR Date: 2026.08.04 11:15:44 +0530

(Zaheer Atanur)
I ADDL. CIVIL JUDGE & JMFC,
CHIKODI.