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| The provision under which application is filed | : | IA No.I– U/Sec. 138(a) of NI Act |
| Relief Sought for | : | Dismissal of complaint |
| The date on which application is filed | : | 19/8/2025 |
| Number of application | : | IA No.I |
| The date on which objections are filed by opponents | : | 30/01/2026 |
| The date on which Order is passed on the application | : | 07/07/2026 |

**ORDERS ON IA No.I FILED UNDER SEC. 138(a) of NI ACT**

**1.** The accused has filed this I.A. No. 1, under Section 138(a) of the Negotiable Instruments Act, 1881. The Accused advocate has filed this application, stating that the cheque in question is not a valid instrument as the said bank was not in existence at the time of the dishonour of the cheque. Therefore, he states that the offence under Section 138 of the Negotiable Instruments Act is not committed by the Accused.

**2.** According to the Accused, the cheque is issued to the Complainant on 17-11-2022, on Syndicate Bank, Udupi branch, bearing cheque number 433456 for Rupees 90,000/-. As per Exhibit P1, this cheque has been dishonoured for the reasons, namely “funds insufficient” and “instrument not valid”. It is pertinent to note in Exhibit P2, which is produced by the Complainant, that the said cheque has been dishonoured for two reasons: 1. Funds insufficient and another reason being 2. The instrument not valid, as the said bank is no more in existence.

**3.** According to the Accused advocate , he says that the Syndicate Bank has merged with the Canara Bank on 1-7-2021. Therefore, the cheque issued on 17-11-2022 was not a valid instrument at the time of presentation to the said bank. Therefore, he says that the Accused has not committed any offence, as alleged by the Complainant. He has also relied upon the judgment of the Allahabad High Court, in *Archana Singh Gautam v. State of U.P. and another* and also the judgment of the Hon’ble Karnataka High Court, in *Criminal Petition 101615 of 2023, dated 6 February 2025.*

**4.** On the other hand, the Complainant has filed the objection and he has stated that the Accused has deliberately issued a cheque, knowing fully well that he did not have any sufficient money in his bank account. Therefore, he says that the cheque has been dishonoured for the reasons “funds insufficient” and therefore he has committed the offence punishable under Section 138 of the NI Act as per proviso contained in the section 138 of the NI Act . He also states that the bank has also issued an endorsement that the cheque is not valid instrument. But along with that there is an endorsement, that there was funds insufficient in the account of the Accused. Therefore, he states that the said cheque was presented within the date of validity and the same has been dishonored and upon the dishonor, he has given a legal notice on 8-12-2022 and the Court has also taken cognizance. He states that the said fact has to be decided at the time of the trial and only on the basis of the application, the said issue cannot be tried and he stays to reject the application.

**5.** Heard the learned advocates appearing for the Complainant as well as the Accused.

**6.** Perused the complaint, the documents, application and the objection, which are being produced before the Court.

**7.** The point that arises for the consideration of this Court is ***"Whether the accused has made out grounds to dismiss the complaint, only on the ground that the said cheque is***

***not valid, when there is an endorsement "funds insufficient" on it ?***

**8.** This court answers the above point in the **NEGATIVE** for the following :

**REASONS**

**9.** It is seen that the Ex.P-1 cheque was issued by the Accused and it bears his signature and it was issued on 17-11-2022, which was drawn on Syndicate Bank, Hukkeri branch, for Rs.90,000/- and the name of the Complainant is also entered in the cheque. Upon presentation by the Complainant, the cheque has been dishonored for the reasons funds insufficient and also as the instrument is not valid (Syndicate Bank).

**10.** There is no dispute with the fact that the said Syndicate Bank has merged with the Canara Bank. The advocate for the Accused has not produced the Gazette notification as to when the merger took place. But according to him, the bank has merged on 1-7-2021 and therefore the cheque which is presented prior to the merger on 17-11-2022 is not a valid cheque, when the same is presented to the drawee bank.

**11.** Therefore, the question which arises for this Court is whether in a case of similar facts where the cheque has been returned unpaid for the reasons funds insufficient and also for the reasons that it has been merged with another bank, whether such cheque would pass the test of proviso (a) of Section 138 of the NI Act.

**12.** I would like to refer the judgment of the Hon'ble Supreme Court, reported in (**1999) 4 SCC 253**, in **NEPC Micon Limited v/s. Magma Leasing Limited,** wherein the Hon'ble Supreme Court has held that the expression "insufficient to honour the cheque is a genus of which the expression" that account being "is a species" and at paragraph No. 9 of the above said judgment, the Hon'ble Apex Court has observed that "the interpretation which is sought for, were given, then it would only encourage dishonest persons" and that has to be avoided.

**13.** Here, the Accused knowing fully well that he had taken a loan and had given a cheque to the Complainant. The said cheque at the time of presentation by the Complainant became an invalid cheque on the account of the drawer's bank got merged with the another bank. And the said cheque has been returned not only on the ground that the account has been suspended or merged but also on the ground that there was insufficient funds in the account of the Accused. In the citations which have been referred by the counsel for the Accused, it is seen that the said cheques have been dishonored for the only reason that the said cheque has been issued and that the said cheque is an invalid cheque.

**14.** The Hon'ble High Court, in Criminal Petition 101615 of 2023 has dealt with this aspect at paragraph number 4 and has also relied upon the Allahabad High Court judgment in the case of Archana Singh Gautam v. State of U.P. and another. The learned counsel for the Complainant has argued that the cheque issued was towards a legally enforceable debt and although it was returned as invalid, the Accused was under an obligation to clear the outstanding amount upon receipt of the statutory notice issued under Section 138 of the NI Act. Therefore, he says that the decisions relied by the Accused is not applicable to the present case and he says that the application deserves to be dismissed.

**15.** After considering the submission of both the parties, the following observations are made:

*a. The subject cheque is issued on 17-11-2022 and*

*b. The same was presented to the bank by the Complainant on the same date, that is 17-11-2022 and*

*c. The cheque has been bounced with* ***the reasons funds insufficient*** *and also instrument not valid.*

*d. By the time the cheque was issued, the said Syndicate Bank had ceased to exist as an independent entity and all its operations had been transferred to the Canara Bank.*

*e. It is seen that the cheque issued from an account maintained in the erstwhile Syndicate Bank appears to be not valid as on the date of the presentation.*

*f. But it is also pertinent to note that the Canara Bank has also maintained the account which was held by the Accused in the erstwhile Syndicate Bank again in the merged Canara Bank.*

**16.** It appears that the Syndicate Bank has taken over the operation of the Canara Bank. The accounts of the customers of Syndicate Bank have been maintained in the same account and also the transactions have been conducted as they were being conducted by the erstwhile bank.

**17.** Further, it is also seen that not only on the account of the cheque being invalid but also there were no funds in the account of the Accused, the said cheque came to be dishonored. Therefore, under Section 138 of the NI Act, proviso (a) shows that if the cheque has been presented to the bank within the period of its validity or within a period of six months and the payee or the holder in due course of the cheque has made the demand for the payment of the said amount by giving a notice in writing within 30 days and the drawer of the said cheque (accused) has failed to make the payment of the said amount to the payee or the holder in due course within 15 days of the receipt of the said notice. Therefore , the offence under Section 138 of NI Act is deemed to be have been committed.

**18.** The only intention of the legislature was to see that the cheques should not be issued by the people without having the intention of honouring the said promise of repayment.

**19.** Further, it is also seen that in this case the Accused knowing fully well that he had taken a loan, has issued a cheque. It is also seen that he did not have any sufficient balance in his account and the said cheque came to be dishonoured for the reasons funds insufficient. All these gives fullfil the ingredients of the offence under Section 138 of NI Act . Therefore, the contention of the Accused advocate that the cheque was not a valid instrument only cannot be considered by this Court at this stage.

**20.** In this case, this Court differs with the judgment of the Hon'ble Allahabad High Court as well as the Karnataka High Court, wherein, in those cases, the facts were different. In those cases, the cheque was dishonoured for the reason that the instrument was not valid. But in this case , the cheque is dishnoured for the reasons “Funds Insuffiient” along with the reason that the cheque was dishonored for the reasons that the instrument was not a valid instrument due to the merger of the erstwhile bank. Therefore in this case, there is a slight difference and the account even though has ceased to exist but also there was funds insufficient in the bank account of the Accused. Further, it is also pertinent to note that the account which was maintained by the erstwhile Syndicate Bank in the name of the Accused is also continued in the merger bank that is the Canara Bank. And if that was not a case, then the Canara bank would have issued only an endorsement that the cheque was not a valid instrument and it would have sent back the Complainant with only that reason in the memo. But in this case, the reasons given by the bank is that there were no funds and the funds were sufficient in the account of the Accused. Therefore, all these shows that the Accused has prima facie committed an offence punishable under Section 138 of the NI Act, which needs to be tried and the same has to be seen at the time of the trial. Therefore, without saying anything on the merits of the case, I am of the opinion that the application filed by the Accused under proviso (a) of Section 138 of NI Act is dismissed as it does not deserve any merits. Therefore the following :

**ORDER**

**The I.A. No. 1 filed under proviso (a) of 138 NI Act is dismissed as the cheque is dishonoured for the reasons "funds insufficient".**

**(Shri. Aditya R. Kalal.)**
**Civil Judge and JMFC.,**
**Hukkeri.**

(Order pronounced in open court, vide separate order)

**O R D E R**

**Civil Judge and JMFC.,**
**Hukkeri.**