

KABI010016972026



**IN THE COURT OF I-ADDITIONAL SESSIONS JUDGE AT
BALLARI**

DATED THIS 4TH DAY OF JULY, 2026

: PRESENT :

SHRI H.A. MOHAN., B.A.L., LL.B.

I-Addl. District & Sessions Judge, Ballari.

CRIMINAL APPEAL No.101/2026

APPELLANT/Accused :-

Bhuchakravarthi M
S/o Nagendra M,
Aged about 36 Years,
R/o Plot No.5, Sri Hari Layout,
Beside Samruddi Layout,
Kappagal Road, Ballari.

(By Shri K.N.M., Advocate)

//Vs//

RESPONDENT :-

B. Gururaj
S/o Late B.S. Narayana Setty,
Aged about 38 Years,
R/o House No.6/4, Ward No.16,
Opposite to Radhika Talkies,
K.C. Road, Ballari.

(Shri K.N.E., Advocate)

J U D G M E N T

This is an appeal filed by appellant/accused in C.C. No.2045/2025 u/Sec.415 of B.N.S.S., 2023, challenging the Judgment of conviction dated 5.2.2026 passed in the said case by the learned 1st Addl. Civil Judge & JMFC, Ballari, on the following grounds.

2. It is stated that, the learned trial Judge has not properly appreciated the oral and documentary evidence. The learned trial Judge has not properly appreciated the defense taken to disprove the case of the complainant. The learned trial Judge has not properly appreciated the documents produced by the accused.

3. It is further stated that, cheque was generated in the year 2019 and during that period, the accused had taken loan from the complainant and towards the security, the said cheque was obtained from the accused. But, after repayment of the said loan amount, the complainant did not return back the cheque to the accused. But, misusing the said cheque, the complainant had filed a false

complaint to claim an amount of Rs.5,00,000, even though the accused is not liable to pay the said amount.

4. It is stated that, the case filed by the complainant is absolutely false, but the learned trial Judge, without properly appreciating the oral and documentary evidence has come to an erroneous conclusion that the complaint filed for the offence u/Sec.138 of N.I. Act has been proved, accordingly convicted the accused for the said offence.

5. It is stated that, miscarriage of justice has been done by the learned trial Judge. Therefore, there are grounds to interfere with the said Judgment and to set aside the same and to acquit him of the offence.

6. It is stated that, the appeal filed is well within period of limitation.

7. In-response to the Notice issued, the Respondent/Complainant has appeared through Advocate.

8. The trial Courts records have been secured.

9. Heard the learned counsels for parties.

10. The following points that arise for my consideration: :

1. Whether the appellant/accused is able to rebut the presumption u/Section 139 of N.I. Act, by placing the proper oral and documentary evidence?
2. Whether the appellant/accused has made out grounds that the appreciation of both oral and documentary evidence by the learned trial Judge is not in accordance with law. Hence, it is liable to be set aside?
3. Whether the interference of this Court is absolutely necessary?
4. What Order?

11. My answer to the above points are as under:

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|------------|---|---|
| Point No.1 | : | In the Negative. |
| Point No.2 | : | In the Negative. |
| Point No.3 | : | In the Negative. |
| Point No.4 | : | As per final order, for the following : |

REASONS

12. **Point Nos.1 to 3** :- These points are interrelated to each other, as such they are taken up together for discussion, to avoid repetition of facts.

13. The learned counsel for the appellant has pointed out that, even though cheque as per Ex.P.1 was collected by the complainant during the year 2019 towards security of the loan borrowed by the accused, but even after repaying the said amount of Rs.2,00,000/- by misusing the said cheque, by filling Rs.5,00,000/-. Even though there was no liability, has filed the false complaint. The complainant has failed to produce the relevant documents to show that Rs.5,00,000/- loan was paid to the accused. The accused had filed a complaint before the police to the effect that the complainant had misused the cheque. Thereafter, the complainant had presented the cheque and then issued the notice. The accused has properly explained all the circumstances before the learned trial Judge to show that the cheque was misused by the complainant and filed the same to have wrongful gain. The

accused has rebutted the presumption available to the complainant, as per Section 139 of N.I. Act, but the learned trial Judge has failed to appreciate the same. Therefore, there is miscarriage of justice done. Hence, the interference of this Court is absolutely necessary.

14. On the other hand, the learned counsel for the Respondent/complainant has supported the Judgment of the trial Judge by arguing that the amount paid to the accused was declared by him in the I.T. Returns, that is sufficient to prove the liability on the part of accused. When issuance of cheque has been admitted, the heavy burden was there on the accused to rebut the presumption by leading cogent evidence, but plea of Alibi has not been proved. Therefore, the learned trial Judge has properly appreciated the evidence of both oral and documents and rendered justice. Accordingly, prayed to dismiss the appeal.

15. In the light of said arguments, I have perused the entire records. Here in this case, there is no dispute that Ex.P.1-cheque is pertaining to the accused. It is also

not in dispute that he has issued said cheque in favour of the complainant. But, according to the accused, the same was issued in the year 2019 towards security when he had borrowed loan of Rs.2,00,000 from the complainant. He has taken a contention that even after repayment of the said loan amount, the complainant has not returned back. It is to be noted that even though the complainant has admitted that the cheque was printed on 9.4.2019, but he has specifically denied the suggestion that it was issued in the year 2019. There is no law as such that cheque printed about six years or previous years cannot be issued subsequently. But, the validity of the cheque will be six months after the date mentioned in the cheque. But, that fact is not in dispute.

16. When the accused has taken a defense that it was issued in the year 2019 towards security, it is his duty to rebut the same by placing believable evidence. But, he has not issued any notice to the complainant to return back that cheque, if really, it was issued during the year 2019 when two lakh rupees loan was borrowed. It is an

admitted fact that, the accused used to borrow loan from the complainant and used to repay the same. The complainant has clearly admitted the same. Even he has admitted that two Lakhs loan has been cleared and thereafter the accused had borrowed Rs.5.00 Lakhs. But, in that regard, the accused has failed to place believable evidence.

17. On the other hand, the accused has lodged the complaint on 6.6.2025 only. If really, this cheque was issued in the year 2019 and not returned the same by the complainant even after lapse repayment of the loan amount, there was no impediment to lodge a complaint at the earliest point of time. He has failed to explain as to what prevented him either to lodge a complaint or to write a letter to the bank for stopping the payment. Absolutely, no explanation in that regard in terms of the law. Therefore, the contention of the accused in that regard, cannot be believed and accepted.

18. Further, the accused has also taken up a plea of Alibi. According to him, he was not in the station on

3.2.2024 and therefore, the contention of complainant that he had borrowed loan of Rs.5.00 Lakhs on that day is false. In that regard, the accused has given the evidence stating that on 1.12.2024 he left Kochi from Guntakal through Kanyakumari Express Train and he reached Kochi at 5:00 A.M. on 2.12.2024. He also met M.D. of Raja Ice Cream at 11:00 A.M. on 2.12.2024. On the same day, at 8:30 P.M., he left towards Bengaluru and reached K.R. Puram Railway station at 8:30 A.M. and he stayed there in his uncle's house. But, in the cross-examination he has admitted that as per Ex.D.4, he had verified the availability of Ticket on 10.11.2024 itself. He admitted that it was not a Ticket and it discloses that Tickets were available. He admitted that he has not produced Ticket to show that he traveled on 1.12.2024 from Guntakal to Kochi in Train. He failed to give explanation as to why he could not produce the Ticket. Further, he also failed to give satisfactory answer with regard to meeting M.D. Raja Ice Cream. He has stated that he could not examine M.D., in order to prove that he was required to meet him on that day.

19. From the above said evidence, it is clear that the accused has failed to prove the plea of Alibi. When he has taken up a plea of Alibi, it is his duty to prove that he was not available in Ballari on 3.2.2024 and therefore, the alleged transaction was not possible. That shows that in order to defeat the claim of complainant he has taken a false defense. Therefore, the defense taken by the accused in that regard also, has not been proved. Hence, the claim of accused in that regard cannot be accepted.

20. Further, the complainant is admittedly financier and obtained license to do finance. He also declared in his Returns to the Income Tax Department with regard to payment of loan in a sum of Rs.5.00 Lakhs towards the accused. The suggestion that, just to have wrongful gain such a mentioned has been made in the Returns cannot be accepted. Because, this Returns has been submitted by the complainant in accordance with law, since he is licensed money lender. He has given explanation to the effect that other loans were made through cheques. Therefore, he has not shown the same in

the Returns. Therefore, it is clear that the complainant by placing required documents has proved that he has paid hand loan of Rs.5.00 Lakhs to the accused on 3.2.2024. Since the accused has failed to give rebuttal evidence to show that this cheque was not issued towards the said loan and the said cheque was issued in the year 2019 towards loan amount of Rs.2.00 Lakhs, his case cannot be believed and accepted.

21. When it is an admitted fact that both are having friendship in connection with money transactions and accused used to borrow loan from the complainant whenever he needed money, heavy burden is on the accused to place legally acceptable evidence to rebut the presumption particularly with regard to issuance of cheque in the year 2019 itself. But, absolutely there is no believable and acceptable evidence to prove the said aspect.

22. As there is presumption u/Sec.139 of N.I. Act in favour of the complainant and since the accused has failed to place believable material to prove his all the defenses

and the defenses taken by him are not in accordance with law, the arguments of the learned counsel for the appellant/accused cannot be believed and accepted. There is no material to show that the loan amount received from the complainant has been repaid. There is no believable and acceptable evidence to show that the complainant has misused the cheque issued in the year 2019 as alleged by the accused.

23. A perusal of the Judgment under appeal, the learned trial Judge has given categorically findings with regard to all the contentions taken by the accused. The learned trial Judge has relied upon the relevant citations by mentioning the important evidence available to prove the complaint for the offence u/Sec.138 of N.I. Act, has given proper findings. There are no reasons to interfere with the said findings. Therefore, this Court does not find any error or illegality committed in the Judgment passed by the learned trial Judge while passing the Judgment of conviction. The reasons are based upon the oral and documentary evidence. Therefore, the grounds urged by

the accused under this appeal are not tenable in law. Hence, I hold that the appeal filed by the accused must fail. Accordingly, I answer Point Nos.1 to 3 in the Negative.

24. **Point No.4** :- In the result, I proceed to pass the following:

ORDER

The Appeal filed u/Section 415 of B.N.S.S., 2023 by the Appellant/Accused in C.C. No.2045/2025 on the file of learned 1st Addl. Civil Judge & JMFC, Ballari challenging the Judgment dated 5.2.2026 is dismissed with costs.

Consequently, the Judgment of conviction dated 5.2.2026 passed by the learned 1st Addl. Civil Judge & JMFC, Ballari in C.C. No.2045/2025 is hereby confirmed.

Office is directed to send back the records of the trial Court along with copy of this Judgment forthwith.

(Dictated to the Stenographer Grade-I, transcribed and computerized by him, corrected and then pronounced by me in the open Court on this 4th day of July, 2026)

(H.A. MOHAN),
I-Additional Sessions Judge,
Ballari.

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