

KABK200009682021



**IN THE COURT OF PRL SENIOR CIVIL JUDGE & JMFC
MUDHOL.**

Dated this 13th day of March 2024

PRESENT

SMT.GEETHAMANI

B.A.,LL.B

**Prl.Senior Civil Judge & JMFC.,
Mudhol.**

C.C. No.237/2021

Complainant:

- Kittur Rani Channamma Urban Credit Souhard,**
Sahakari Ltd., Bailhongal, Br: Lokapur,
By its representative
Sri.Mahesh S/o Annappa Pandre,
Age: 23 years, Occ: Recovery Assistant,
R/o: Mudhol, Tq: Mudhol, Dist: Bagalkot.

(Represented by Sri.S.C.U Advocate)

- Versus -

Accused:

- Sri.Govind S/o Durgappa Koulagi,**
Age: Major, Occ: Business,
R/o: Lokapur, Tq: Mudhol, Dist: Bagalkot,
Mobile No.9945181888,

(Represented by Sri.L.N.S Advocate)

Name of the complainant	Mahesh S/o Annappa Pandre
Offence alleged	138 of N.I.Act.
Date of recording of evidence	04.12.2020
Date of closing of evidence	16.12.2023
Opinion of Judge	As per final order

(Smt.Geethamani)
Prl.Senior Civil Judge & JMFC.,
Mudhol.

JUDGMENT

The complainant has filed this complaint U/Sec.200 of Cr.P.C against the accused for the offence punishable U/s.138 of N.I.Act.

2. The sum and substance of the complaint is as follows :-

That the complainant is a Sahakari Bank having its head office at Bailhongal and branch office at Lokapur for carrying its business of Banking to its members. The complainant for the purpose of this complaint has been represented by Sri.Mahesh S/o Annappa Pandre, who is working as Recovery Assistant in the complainant Bank.

3. That, the accused is the share holder of Bank and the accused has applied for the loan for business purpose on 04.05.2018 for which the complainant bank has sanctioned the loan of Rs.8,00,000/- for a period of 60 months and accused has executed the loan documents i.e. agreement and promissory note towards the repayment of debt. At the time of obtaining the loan the accused has executed the agreement to pay the installment of Rs.13,334/- per month. That, the accused has failed to repay the loan and interest and complainant Bank approached to the and demanded to the principal borrower several times for repayment of loan amount along with interest, but the principal borrower has failed to repay and prolonged by one or other reasons. Lastly, for repayment of the same, the accused issued a cheque bearing **No.302260, dated 20.01.2020, for Rs.9,12,642/-** in favour of complainant drawn on State Bank of India, Br: Lokapur. Thereafter, the complainant presented the said cheque for encashment through its Corporation Bank Br: Lokapur and the said bank authority issued cheque return memo on **27.01.2020** stating that the **"Funds Insufficient"** in the account of the accused. Immediately on **11.02.2020** the complainant issued legal notice to the accused and the said notice was duly

served on **13.02.2020**. Even inspite of it the accused had failed to make arrangement of **Rs.9,12,642/-** as per cheque issued and thereby committed an offence punishable under Sec.138 of Negotiable Instrument Act. On these allegations the present complaint is filed against the accused.

4. After taking cognizance and recording sworn statement of the complainant this court has ordered to register a criminal case against the accused for the alleged offence and issued summons, the accused has appeared before the court and he was enlarged on bail.

5. The accusation for the offence punishable U/Sec.138 of N.I Act is framed, read over and explained to accused and the accused submits that he will settle the case if time is granted.

6. On the basis of above contentions, the following points arise for my consideration;

:: P O I N T S ::

1. Whether the complainant proves that the accused has issued a cheque

bearing No.302260 dated 06.08.2022 for Rs.9,12,642/- towards discharge of his liability, when the said cheque was presented it was dishonored for the reasons "Funds insufficient" and the accused even after service of legal notice has not repaid the cheque amount and thereby committed an offence punishable U/sec.138 of N.I.Act?

2. Whether the accused has successfully rebutted the presumption raised U/Sec.139 of N.I.Act ?

3. What order?

7. The complainant in support of his case has adopted the sworn statement as his examination in chief evidence and examined as PW-1 and got marked Ex.P1 to Ex.P7 documents.

8. It is pertinent here to note that after giving sufficient opportunity to accused, accused not appeared before the court for cross-examination of PW1 hence cross examination of PW1 is taken as nil and case is posted for recording of 313 statement of the accused.

But, accused not appeared before the court for recording 313 statement of the accused. Hence, the 313 statement of the accused dispensed with.

9. Heard the arguments of both the sides.

10. On perusal of records, oral and documentary evidence placed before this court, my answers to the above points are as under;

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

:: R E A S O N S ::

11. Point No.1:- The complainant has filed the present complaint against the accused for the offence punishable U/sec.138 of N.I.Act. It is the case of the complainant that the accused has availed loan from the complainant for his family necessity. In order to repay the said hand loan amount with interest the accused has issued the disputed cheque **dated. 20.01.2020**. The said cheque when presented was dishonored for the reasons "**Funds Insufficient**" with a banker's memo

dated 27.01.2020. Then, the complainant within 30 days has issued legal notice on **11.02.2020** calling upon the accused for repayment of the above said loan amount. The said notice was duly served upon the accused **on 13.02.2020**. However, the accused has not paid the cheque amount.

12. Thereafter, after waiting for 15 days the present complainant has presented this complaint before this court on 17.03.2020 within the statutory period.

13. Keeping in mind the above facts, I would like to refresh my memory by going through following relevant provisions under N.I.Act.

118. Presumption as to negotiable instruments.

- Until the contrary is proved, the following presumptions shall be made:-

(a) **of consideration** :- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration:

(b) **as to date** :- that every negotiable instrument bearing a date was made or drawn on such date;

(c) **as to time of acceptance** :- that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity:

(d) **As to time of transfer**:- that every transfer of a negotiable instrument was made before its maturity.

(e) **as to order of indorsements** :- that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) **as to stamp**;- that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) **that holder is a holder in due course**;- that the holder of a negotiable instrument is a holder in due course : provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of providing that the holder is a holder in due course lies upon him.

OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN

CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

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 three 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 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 of other liability” means a legally enforceable debt or other liability

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

14. Keeping in mind the above provision under law, I have once again verified the complaint averments and the records. In this case as per the case of the complainant the accused has borrowed hand loan of **Rs.8,00,000/-** from complainant on credit basis and for its repayment has issued cheque bearing **no.302260 dated 20.01.2020**. The said cheque admittedly has been presented before the Bank within statutory period of 90 days, the Bank has issued memo on **27.01.2020** stating that "**Funds Insufficient**". On **11.02.2020** i.e. within 30 days from the date of Bank endorsement, the complainant issued legal notice calling upon the accused to repay the loan. The said notice was not claimed by the accused and not repaid the cheque amount and complaint is filed within period of limitation.

15. In order to substantiate the case of the complainant, the complainant adopted the sworn statement and relied upon the documents marked at Ex.P1 to Ex.P7. The Ex.P1 is the resolution, Ex.P2 is the cheque dated 20.01.2020. The Ex.P2(a) is the signature of accused person. The Ex.P3 is the bank endorsement dated 27.01.2020. The Ex.P4 is the copy of legal notice dated 11.02.2020. The Ex.P5 is the postal receipt dated 11.02.2020. The Ex.P6 is the postal

envelope. The Ex.P7 is the Account statement of the accused. On the other hand accused has not led his defence evidence and not marked any documents on his behalf.

16. In this case the accused has not disputed his signature upon the Ex.P2 cheque.

17. On going through the above factual sequences and documents, I am of the firm opinion that the complainant prima-facie adduced enough evidence to raise presumption U/Sec.139 of N.I.Act. Further the complainant has also brought sufficient evidence to prove that the cheque is presented within the period of limitation before the court.

18. The law mandates that once the signature of an accused on the cheque is established, then the reverse onus clause become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. This point of law has been crystallized by **Hon'ble Apex court reported in (2019 (18) S.C.C.106) in between Rohitbhai Jivanlal Patel Vs. St of Gujarat in the following words-**

“ In the case at hand, even after purportedly drawing the presumption U/Sec.139 of N.I.Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused”.

It is further held that “this approach of the trial court had been at variance with the principles of presumption in law. After such presumption the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such fact and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant case could not have raised for want of evidence regarding the source of funds for advancing loan to the accused”.

19. On careful reading of the above well settled principle of law, I am of the opinion that when the cheque is issued by the accused in favour of the complainant, the said fact is sufficient to draw a presumption in favour of the complainant that there is legally enforceable debt. The burden then shift upon the accused to rebut the said presumption. Therefore, I am of the opinion that the complainant has proved regarding legal enforceable debt and regarding the technicalities of the cheque and it is sufficient to raise presumption U/Sec.139 of N.I.Act. Moreover, the accused has not stepped into the witness box to prove his defence. So, the oral and documentary evidence of PW1 is sufficient to hold that the accused has issued cheque **dated 27.01.2020** for **Rs.9,12,642/- with interest** towards discharge of his liability, when the said cheque was presented it was dishonored for the reasons **"Funds Insufficient"** and accused has not repaid the cheque amount even after notice is served and thereby committed an offence punishable U/sec.138 of N.I.Act. The accused has not lead his defence evidence to prove his case. Accordingly the complainant has succeeded to prove the guilt of the accused in accordance with law. **Hence, I answer point No.1 in the Affirmative.**

20. Point No.2 : Now the law is well settled that in order to rebut the presumption U/Sec.139 of N.I.Act a duty is casted upon the accused to make his defence at the time of recording of plea itself. The said proposition of law is laid by **Hon'ble Apex Court in AIR 2014 SC 2528 (Indian Bank Association Vs Union of India), Criminal petition no.8943/2010 M/s Mess Transgare Private Vs Dr.R Parvatreddy and in Rajesh Agarwal's** case wherein it is held that:

"Accused cannot simply say I am innocent or I plead not guilty. But it is the duty of the accused to state about his defence".

In this case plea of the accused was recorded as per Sec. 251 of Cr.P.C. The accused pleaded not guilty. As per sec 251 of Cr.P.C accused has to state about his defence.

21. Keeping in mind the above proposition of law in mind I have verified the plea wherein the accused has not even made his specific defence. But, the

accused simply pleaded not guilty which is not sufficient to rebut presumption U/Sec.139 of N.I.Act.

22. On careful perusal of the above evidence it is clear that there was acquittance and good relationship in between complainant and accused for many years. The said evidence is sufficient to draw an inference that in view of acquittance there was a financial transaction in between complainant and accused.

23. Moreover, on carefully perusal of Ex.P1 it reveals that cheque was presented for a sum of Rs.9,12,642/-. On carefully perusal of Ex.P3, which is demand notice issued by the complainant through RPAD was served upon the accused. Admittedly the accused has not replied to the said notice, but he has failed to prove that he has not issued the cheque.

24. In the cross-examination of PW.1 also nothing is elicited in order to prove his defence. In his cross-examination PW1 has clearly stated that the accused has purchased fertilizers from him on credit basis which amount to Rs.9,12,642/-. On the other hand, on carefully

perusal of the documentary evidence and oral evidence of the complainant, I do not have any hesitation to hold that the complainant had a financial capacity at relevant point of time.

25. On the other hand, on careful perusal of all the documentary and oral evidence of complainant and also decisions rendered by our Hon'ble Supreme Court of India, I do not have any hesitation to hold that there was a loan transaction between the complainant and accused and Ex.P1 was issued by the accused for discharge of his liability. On perusal of all the oral and documentary evidence of complainant, I feel that it is a fit case to convict the accused. Hence, considering all the oral and documentary evidence of complainant, I am of the opinion that the complainant has discharged his initial burden and also has established the guilt of the accused by cogent and convincing evidence before this Court. When accused admitted the cheque then burden shifts on the accused to prove that cheque is not issued for discharge of any debt or liability. If the accused is failed to discharge his burden then the accused is to be convicted for the offence punishable U/s.138 of N.I.Act. In this case, the accused has failed to rebut the presumption and failed to the aforesaid facts. On the other hand, the complainant has proved

the guilt of the accused to the satisfaction of the Court that the accused had issued cheque marked as per Ex.P1 to discharge the hand loan amount and the same is dishonoured. In this case as the accused failed to set-up proper defence, hence, I am of the opinion that accused has failed to rebut the presumption raised U/Sec.139 of N.I.Act Accordingly, **I answer point no.2 in the Negative.**

26. Point No.3: In considering the peculiar facts of this case, I proceed to pass the following:

ORDER

Acting U/Sec.255 (2) of Cr.P.C the accused is hereby convicted for the offence punishable U/sec 138 of N.I.Act.

Accused is hereby sentenced to pay a fine of **Rs.9,17,642/- (Rupees nine lakh seventeen thousand six hundred fourty two only)** within one month and in default to pay the fine amount the accused shall undergo simple imprisonment for one year.

Out of the total fine amount, an amount of **Rs.9,12,642/-** is ordered to be paid as compensation to the complainant U/sec 357(1) of Cr.P.C and remaining amount of **Rs.5,000/-** is ordered to be remitted to the state.

The bail bond and surety bond stands canceled.

Supply free copy of this judgment to the accused if he is present.

(Dictated to the Stenographer directly on computer, typed by her, corrected, signed by me and then Judgment pronounced in the open court, this the **13th Day of March 2024**)

(Smt.Geethamani)
Prl.Senior Civil Judge & JMFC.,
Mudhol.

A N N E X U R E

1) LIST OF WITNESSES EXAMINED ON BEHALF OF PROSECUTION :-

PW1: Sri.Mahesh S/o Annappa Pandre.

2) LIST OF DOCUMENTS MARKED ON BEHALF OF

PROSECUTION :-

- Ex.P1 : Resolution.
- Ex.P2 : Original Cheque.
- Ex.P2(a) : Signatures of the accused.
- Ex.P3 : Bank endorsements.
- Ex.P4 : Office copy of legal notice.
- Ex.P5 : Postal receipt.
- Ex.P6 : Postal acknowledgment.
- Ex.P7 : Loan extract.

3) LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED:-

-NIL-

4) LIST OF DOCUMENTS MARKED ON BEHALF OF ACCUSED:-

-NIL-

**(Smt.Geethamani)
Pri.Senior Civil Judge & JMFC.,
Mudhol.**

