KADK080016702025

Presented on : 25-04-2024
Registered on : 27-04-2024
Decided on : 14-05-2026
Duration : 2 years 0 months 19 days

**IN THE COURT OF JMFC IV COURT**

**MANGALURU, D.K.**

**PRESENT:**

**DR. SHILPA BYADAGI**

**B.A, LL.B (Hons), LL.M, PhD**

**JMFC IX COURT, MANGALURU**

**AND**

**CONCURRENT CHARGE OF IV JMFC COURT**

**MANGALURU**

**DATED THIS THE 14th DAY OF MAY 2026**

C.C./1323/2025

**BETWEEN:**

**CASMIR D'SOUZA**
Aged 47 years,
President of Dakshina Kannada
Zilla Sahajeevana Okkoota (Reg)
C/o CODP Nanthoor Padavu Post,
Bejai, Mangaluru-575004.

**(By Seema Rodrigues, Advocate)**

**......COMPLAINANT**

**-AND-**

**MARCELINE D'SOUZA**
Aged 51 years,
W/o David D'Souza,
R/at Kemanadka House,
Badaganoor Post, Puttur
Taluk, Dakshina Kannada
District, Pin Code-574223.

**(By Ashfaq. M.M.I., Advocate)**

**......ACCUSED**

| | | |
|---|---|---|
| Date of Complaint | : | 25.04.2024 |
| Offence Charged | : | Under Sec.138 of N.I.Act |
| Date of Commencement of evidence | : | 11.09.2024 |
| Date of Closing of evidence | : | 16.02.2026 |
| Date of Judgement | : | 14.05.2026 |

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**(DR. SHILPA BYADAGI)**
**JMFC IV COURT, MANGALURU.C/c**

## JUDGMENT

The instant private complaint is filed by the complainant under Section 200 of Cr.P.C against the accused alleging commission of offence punishable Under Section 138 of Negotiable Instruments Act.

2. **The complainant case in nutshell is as follows:**

It is the specific case of complainant that, complainant is the President of Dakshina Kannada Zilla Sahajeevana Okkoota (Regd) and he is sent notice in his capacity as its president of the above Okkoota. Accused is working as an animator in Puttur Taluk under NRM program of the CODP organization. Accused also working in 28 selfhelp groups. Okkoota has given Axis Bank Loan to its members from Sahajeevana Okkoota Mangaluru through Adarsha Okkoota Puttur under accused jurisdiction. Accused have used this loan repayment amount every month for her personal needs thus the amount repaid every month is used for her personal use is Rs.26,05,100/-. Based on this accused has entered into an agreement dated 01.12.2022. On the basis of the said agreement accused have paid Rs.10,00,000/- on 31.12.2022 as first installment and she agreed to pay balance amount of Rs.16,05,100/- on 31.12.2023. Towards repayment of the above amount accused issued to complainant a cheque dated 17.02.2024, bearing No.756445 drawn on Indian Overseas Bank, Puttur, Mangaluru Branch for Rs.16,05,100/-. At the time of issuance of cheque she promised complainant that she will maintain sufficient amount to honour the cheque on presentation. The Complainant presented the said cheque for collection before Axis Bank Ltd, Mangaluru on 01.03.2024.

But said cheque return on 02.03.2024 for the reason “Funds Insufficient”.

3. Further the complainant submitted that he was constrained to issue a lawyer’s notice dated 23.03.2024 through his advocate to the accused calling upon her to make the payment covered by the above said cheque within 15 days from the date of the receipt of the notice. The said notice was sent by R.P.A.D. to the accused on 25.03.2024 through Badiadka Post Office Kasaragod. The accused is deliberately having knowledge of the said notice refused to service of notice, hence the notice is deemed to be served on 28.03.2024. The accused ought to have made the payment on or before 11.04.2024. But accused had neither given any reply or has not made the payment till today. Hence this complaint. It is therefore prayed that, this Hon’ble Court may be pleased to proceed against the accused as per law in the interest of justice.

4. Initially the present complaint was filed before JMFC V Court, Mangaluru, and based on the averments of complaint, pre-summoning evidence and other materials available on record, the learned JMFC V Court, Mangaluru was pleased to take the cognizance of the offence U/s 190 of Cr.P.C. and issued process U/s 204 of Cr.P.C. In response to the Summons issued, the accused had appeared before the Court and filed vakalath and bail application through her counsel and she was admitted to bail. Copy of complaint and other relevant materials were supplied to the accused as

required U/s 207 of Cr.P.C. Notice of accusation as required U/s 251 of Cr.P.C were framed and the same were read over and explained to the accused in the language known to her, for which the accused pleaded not guilty and claimed to make defence. Since the accused had chosen to contest the matter by rising defence and also the learned counsel for accused filed application U/s 145(2) of NI Act seeking permission to cross examine the witness, this Court allowed the application and permitted the accused to cross examine the complainant. However, the documents submitted by the complainant were not yet marked by then, an opportunity was given to the complainant to lead evidence. When the case was at the stage of further complainant evidence, the Hon'ble Principal Senior Civil Judge and CJM, Mangaluru was pleased to order for transfer of this case to this Court vide notification bearing No.2163/2025 dated 03.07.2025. Soon after the receipt of the case record, the same was renumbered and assigned to this Court.

5. In order to prove the case, the complainant himself got examined as PW1 and also got marked the documents as Ex.P1 to Ex.P9 and Ex.P1(a) and Ex.P5(a) and closed his evidence. Further the complainant has examined two witness as PW2 and PW3.

6. Thereafter, the incriminating circumstances appeared from the evidence of PW1 as required under section 313 of Cr.P.C were read over and explained to the accused in the language known to her, for which the accused had denied all

the incriminating evidence appeared against her and submits that, she has no defence evidence to lead.

7. Heard the arguments of learned counsels for the complainant and the accused. Perused the entire materials available on record. The learned counsel for the accused has relied upon the following decision.

1. Kamala S. V/s Vidyadharan M.J. and Ors. The Hon'ble Supreme court of India, in Crl.Appl.No. 233 of 2007 (Arising out of SLP (Crl.) No. 3410 of 2006), dated 20.02.2007.

2. Krishna Janardhan Bhat V/s Dattatraya G. Hegde. The Hon'ble Supreme court of India, in Crl.Appl.No.518 of 2006 dated 11.01.2008.

3. M.S. Narayana Menon V/s State of Kerala and Ors. The Hon'ble Supreme court of India, in Crl. Appl. No. 1012 of 1999 dated 04.07.2006

8. I have gone through the decisions relied by the learned counsel for the accused and the accused in detail.

9. Based on the contentions raised in the complaint the following points would arise for my consideration:

**1. *Whether the complainant proves that the accused in discharge of legally recoverable debt has issued cheque bearing No.756445 for Rs.16,05,100/- dated:17.02.2024 drawn on Indian Overseas Bank, Puttur, Mangaluru Branch which came to be dishonored with an endorsement "FUNDS INSUFFICIENT" on 02.03.2024, in spite of due service of notice,***

***the accused has not paid the cheque amount within the time prescribed under the law and thereby the accused has committed the offence punishable under Section 138 of Negotiable Instrument Act.?***

**2) What order or sentence?**

10. My findings on the above points are as hereunder:

Point No. 1: **IN THE AFFIRMATIVE**

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

**:<u>REASONS</u>:**

11. **<u>Point No.1:</u>** The complainant in order to prove the case has filed affidavit in lieu of his examination in chief and examined as PW1 reiterating the entire averments of the complaint and in order to substantiate his oral evidence, the complainant got marked documents Ex.P1 to Ex.P9 and Ex.P1(a) and Ex.P5(a). I have carefully perused the documents marked by the complainant. Ex.P1 is the disputed cheque dated 17.02.2024 issued in the name of the complainant herein for Rs.16,05,100/- and it bears the signature of the accused as per Ex.P1(a). The accused has disputed the issuance of cheque in favour of the complainant, but she has not disputed her signature in the cheque. On perusal of Ex.P2 cheque return memo, the Ex.P1 cheque in question was dishonored for the reason 'Funds Insufficient'. The accused did not dispute the factum of presentation of cheque to the bank and consequent dishonor of the same for the reason 'Funds Insufficient'. As per section

146 of NI Act there is presumption in respect of Bank Slip/memo as to dishonor of cheque. On perusal of Ex.P3 legal notice and Ex.P4 is the Postal Receipt shows that the complainant has issued the demand notice to the accused for payment of cheque amount within 15 days on receipt of notice and on 28.03.2024 as per Ex.P5 and Ex.P5(a) said notice returned unserved with shara 'refused'. Further in support of the case the complainant has produced Ex.P6 is the Letter of undertaking, Ex.P7 is the Appointment letter, Ex.P8 is the Account statement and Ex.P9 is the Certificate U/s 65(b). On perusal of Ex.P1 to Ex.P9 documents, it appears that, the complainant has complied with all the mandatory requirements of section 138 of NI Act and presented the complaint well within the period of limitation.

12. On perusal of oral and documentary testimonies placed on record by the parties, at foremost it is apparent on the face of the record that, the documents produces by the complainant at Ex.P1 to Ex.P5 clearly discloses that the complainant has complied all the statutory ingredients of the offence enumerated in Section 138 of NI Act, to establish factum of dishonour of cheque and secondly there is no dispute that the cheque in the custody of complainant which is marked as Ex.P1 and the accused has not disputed Ex.P1 and not denied her signature on the said cheque. Under such circumstances, the complainant is entitled for the statutory presumption provided in-favour of complainant under section 118 and 139 of the Negotiable Instrument Act,

is attracted. The relevant sections are extracted below for the sake of convenience.

> **Section 118 Presumptions 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;
>
> **Section 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.

13. As per these mandatory provisions, once the accused admitted that cheque that it relates to her account and admits the signature on the said cheque, then initial presumption as contemplated under Section 139 of NI Act has to be raised in favour of the complainant. It is required to be presumed that the cheque in question was drawn for consideration and the holder of the cheque i.e the complainant received the same in discharge of legally enforceable debt. Therefore, onus shifts on the accused to establish a probable defence. *In Rangappa Vs Sri Mohan* Reported in (2010)11 SCC 441, wherein the Hon'ble Supreme Court of India held that:

> 26.The presumption mandated by section 139 includes a presumption that there exists a legally

> debt or liability. This is of course in the nature of rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein, there can be no doubt that there is an initial presumption which favours the respondent complainant
>
> 15. The scope of Section 139 of the Act is that when an accused has to rebut the presumption, the standard of proof for doing so is that of “preponderance or probabilities”

14. In *Hiten P. Dalal Vs Bratindranath Banerajee*, reported in AIR (SC) 2001, 3897 where in the Hon’ble Supreme court India narrated how the presumption can be rebutted and what is the responsibility of the accused. The relevant portion of the judgement reads as follows:

> “In the case of a discretionary presumption the presumption if drawn may be rebutted by an explanation which "might reasonably be true and which is consistent with the innocence" of the accused. On the other hand, in the case of a mandatory presumption "the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S.114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words ‘unless the contrary is proved’ which occur in this provision make it clear that the presumption has to be rebutted by ‘proof’ and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man

> would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be rebutted."

15. On this point the settled legal position and a combined reading of above said sections raises a presumption in favour of the holder of the cheque that he has received the same for discharge in whole or in part of any debt or other liability and burden to rebut the statutory presumption at first instance is on accused. In the absence of contrary evidence on behalf of the accused, the presumption under section 118 of the NI Act, goes in favour of the complainant. Recently in ***Raja ram S/o Sriramulu Naidu (Since deceased) Through LRs v. Maruthachalam (Since deceased) Through LRs,*** reported in 2023 SCC Online SC 48, the Hon'ble Supreme Court of India held that, Under Section 139 of Negotiable Instrument Act 1881, the standard of proof for rebutting the presumption is that of preponderance of probabilities. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. The accused can take probable defence in the scale of preponderance of probability to rebut the presumption available to the complainant.

16. In the light of this legal position, I have analysed the evidence available on record. To substantiate the case the complainant has examined himself as PW.1 and got marked Ex.P1 to Ex.P9. The PW1 in his evidence has reiterated the contents of the complaint and issuance of cheque in question for discharge of aforesaid debt and dishonour for insufficient funds in the account maintained by the accused person, issuance of legal notice to the accused calling upon her to pay the amount covered under cheque and her failure to comply the same. Further the complainant has examined two witnesses by name Mr.Vincent D'souza and Ravikumar Crasta as PW2 and PW3 and both witnesses deposed in support of the complainant case.

17. On the other hand, the accused has denied the case of the complainant and in order to rebut the statutory presumption the counsel for the accused subjected the PW1 and PW3 for cross examination. The accused has not stepped into witness box to put forth her defence and adduced defence evidence. During the cross examination of PW1, the accused has taken the defence that, the accused is complainant's brother's wife. There is a land dispute between complainant and her brother. The accused has only taken a loan of Rs. 10,00,000/- from CODP for the marriage of her daughter, but even after repaying it, the complainant misused the ExP1 blank signed cheque obtained during the agreement by the accused due to our family dispute. The

accused has not received money from the members of CODP and does not owe any money. Therefore, the complainant has produced the audit book, account book or any receipts of our organization. The complainant has no authority to register and conduct this case without obtaining written consent of the superior of the organization. The complainant has filed this false case by misusing the blank cheque obtained while giving the loan to the accused. The complainant has obtained signatures from the accused on the blank paper of Ex.P6. The complainant has created and produced Ex.P1 to Ex.P9 for the purpose of this case. Further in cross examination of PW2 the accused defended that, CODP byelaws does not say that complainant has authority file case, therefore byelaws not produced. Further in the cross examination of PW3 the accused defended that, PW3 has job of collecting money and said money was misused by the PW3 and complainant. Further the accused defended that cheque issued as security to loan was misused by PW3 and the complainant.

18. In this backdrop of the rival contentions, this court has taken anxious consideration to the materials available on record and submissions made by both counsels before the court. In instance case the accused has not denied issuance of Ex.P1 to the complainant but it is specific defence that there is family dispute between accused and the complainant and the complainant had misused the alleged cheque Ex.P1 given as security to loan even though

she has repaid loan amount. In this case the accused has not denied that she has availed loan and not denied the issuance cheque to the complainant, but the contention of the accused is that she has issued cheque for security. It is pertinent note that, once the of issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and the onus shifts to the accused to rebut this presumption with probable evidence. In ***Sripati Singh v the State of Jharkhand & Anr*** reported in 2021 SCC Online SC 1002, the Hon'ble Supreme Court of India held that, a cheque issued by way of security, if the same is issued in consequence of a legally enforceable debt, which has become recoverable at the time of its presentation. In this case the accused even though taken the defence that, she has paid the loan amount to the complainant and she is not liable to pay money to the complainant, but in order to establish that the accused has not produced sufficient evidence. It is significant to note that, the accused has not filed complaint against the complainant and PW3 for misuse of alleged cheque and furthermore the accused not even sent a notice to complainant contending that the complainant has misused cheque given for security. Further the accused has not placed evidence and explanation on record to show why she has not taken legal action against the complainant. In the instance case the accused has taken a vague and bald defence without placing any cogent evidence to prove the same. It is well settled that, mere distorted version or mere taking up defence by the accused that she is not liable to pay any amount, are not sufficient to put back the burden on the complainant. The accused has to brought on record something which is probable in rebuttal of presumption.

19. Furthermore, perusal of the record shows that prior to filing of the complaint the complainant has issued legal notice Ex.P3 to accused and Ex.P5 postal cover clearly discloses that the notice issued to the accused residential address returned with shara 'refused'. In this case the accused has not denied the address mentioned on Ex.P3 and Ex.P5. It is settled principle of law that, postal instrument sent to the proper address through registered post acknowledgment due shall be taken as duly served on the addressee. ***In Parameshwaran Unni v. G Kannan,*** reported in 2017 Cri.L.J 2838**,** it was held that " it is clear from section 27 of General clauses Act,1897 and Section 114 of the Indian evidence Act, 1872, that once notice is sent by registered post by correctly addressing to drawer of cheque, service of notice is deemed to have been affected and In **C.C. Alavi Haji vs Palapetty Muhammed & Anr,** reported in (2007) 6 SCC 555, the Hon'ble Supreme Court of India held that, Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in

the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. In the instance case, the complainant has issued notice to the accused in prescribed manner and complied requirements under proviso(b) of section 138. As per the above cited decision it is presumed as due service and burden is on accused to rebut the presumption. But in the present case the accused has not placed any evidence to rebut the presumption. In instance case it shows the accused has knowledge of issuance of legal notice. But the accused has not taken any steps to reply for said notice, and it is to be noted that no prudent person will keep quite without issuing reply to legal notice, if he is not liable to pay. In this regard it is relevant to cite the judgment of Hon'ble Apex in the case of ***Rangappa V/s Sri Mohan***, *reported in (2010) 11 SCC 441 wherein the Hon'ble Supreme Court of India, pleased to observed that, Very fact that the accused had failed to reply to the statutory notice under Section 138 of Negotiable Instruments Act leads to inference that there was merit in the complainant's version.* Admittedly, in the present case, the accused has not given any reply notice to the statutory notice of complainant. In view of the above said decision it leads the inference that there is merit in the complainant's version.

20. From the discussion made supra, it is clear that, the accused has not placed probable defence and any cogent materials before the Court to rebut the presumption drawn in favour of the complainant. The accused has miserably failed to discharge her reverse onus. The light of the foregoing discussions, this court is of the opinion that the accused have not led any cogent evidence to rebut presumptions under Sec.118 and 139 of NI Act. There is nothing coming out during the trial which would probablise the defence raised by the accused or falsify the case of the complainant. Therefore, evidence on record suffice to hold that, the cheque Ex.P1 indeed issued by the accused favour of the complainant towards discharge of legally enforceable debt or liability and on its presentation, same is dishonored and in spite of issuance of legal notice, the accused have not paid the cheque amount, thereby committed the offence U/Sec.138 of N.I. Act. The accused has failed to rebut the presumptions raised in law u/s 118 and 139 of the NI Act. Hence, the accused has not been able to cast a doubt in the case of complainant by leading clear and cogent evidence. Therefore, in view of the discussion held above and facts and circumstances of the case, this court is of the opinion that the defence raised by the accused does not inspire confidence or meet the standard of 'preponderance of probability'. Hence by taking consideration of all the facts and the circumstances of the present case, I answered Point No.1 in the **Affirmative.**

**21. <u>POINT NO.2:</u>** With regard to question of sentence, it is to be noted that, for commission of offence under Section 138 of the N.I Act, it provides accused can be punished with imprisonment for a term which may extend to two years or with fine, which may extend to twice the amount of the cheque, or with both. But the Hon'ble Apex court in many cases observed that an offence under section 138 of the Act is almost in nature of a civil wrong which has been given criminal overtones and substantive sentence of imprisonment shall not be imposed except in exceptional cases and at the same time, direction to pay compensation to the complainant by way of restitution in regard to the loss on account of dishounour of the cheque, shall be made. On perusal of the facts and circumstances of this case and considering facts and circumstances of the case, this court is of the opinion that, it is proper to impose sentence of fine only on the accused instead of sentencing her to undergo imprisonment and the accused has to compensate the complainant in terms of money by paying interest on the cheque amount. By taking consideration of the aforesaid reasons and discussions, the Court would like to proceed to pass the following:

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

Acting under Section 255(2) of the Criminal Procedure Code., accused is hereby convicted for the offence punishable under Section 138 of Negotiable Instrument Act, 1881.

The accused is sentenced to pay fine of Rs.16,10,100/- (Rupees Sixteen Lakhs Ten Thousand One Hundred Only). In default of payment of fine she shall undergo simple imprisonment for six months.

Further, acting under Sec.357(1)(b) of Cr.P.C. it is ordered that, out of the total fine amount, an amount of Rs.16,05,100/- shall be paid to the complainant as compensation.

The remaining amount of Rs.5,000/- is ordered to be remitted to the State.

Further, it is made clear that in view of proviso to section 421(1) of Cr.P.C the accused shall not be absolved of her liability to pay compensation amount of Rs.16,05,100/- awarded U/s 357 Cr.P.C even if she undergoes the default sentence.

Bail bond and surety bond of the accused stands cancelled.

Office is hereby directed to supply free certified copy of this Judgment to the accused.

*(Dictated to the Stenographer on-line computer and computerized by her, revised, corrected and then pronounced by me in the open Court on this the 14th day of May 2026)*

SHILPA S BYADAGI

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**(DR. SHILPA BYADAGI)**
**JMFC IV COURT, MANGALURU.C/c**

**ANNEXURE**

**LIST OF WITNESSES EXAMINED ON BEHALF OF COMPLAINANT.**

| | |
|---|---|
| PW1 | Mr. Casmir D'Souza |
| PW2 | Mr. Vincent D'Souza |
| PW3 | Mr. Ravi Kumar Crasta |

**LIST OF DOCUMENTS MARKED FOR COMPLAINANT:**

| | |
|---|---|
| Ex.P1 | Original cheque bearing No.756445 dated:17.02.2024 |
| Ex.P1(a) | Signature of accused |
| Ex.P2 | Cheque return memo |
| Ex.P3 | Office copy of legal notice |
| Ex.P4 | Postal receipt |
| Ex.P5 | Unserved Postal cover |
| Ex.P5(a) | Unserved Notice |
| Ex.P6 | Letter of undertaking |
| Ex.P7 | Appointment letter |
| Ex.P8 | Account statement |
| Ex.P9 | Certificate u/s 65(b) |

**LIST OF WITNESSES EXAMINED ON BEHALF OF ACCUSED :**

| | |
|---|---|
| | NIL |

**LIST OF DOCUMENTS MARKED FOR ACCUSED**

| | |
|---|---|
| | NIL |

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**(DR. SHILPA BYADAGI)**
**JMFC IV COURT, MANGALURU.C/c**