CALENDAR AND JUDGMENT IN C.C.NO.223 OF 2024 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION), ELURU-CUM-JUDICIAL MAGISTRATE OF FIRST CLASS, ELURU

1. Date of Offence : 29.10.2022
2. Date of report : 06.12.2022
3. Date of arrest of accused : --------------
4. Date of release on bail : --------------
5. Date of commencement of trial : 11.08.2023
6. Date of close of trial : 26.08.2025
7. Date of judgment : 01.09.2025
8. Complainant :

   Gudavalli Vidya Sagar, S/o.Late Ananda Kumar, Hindu, Male, age 31 years, R/o.D.No.28-1-53/1, Kumar Street, 8th Road, Santhi Nagar, Eluru, West Godavari District.

9. Accused :

   Kanamarlapusi Srinivasa Rao, S/o.Venkateswara Rao, Hindu, Male, age 50 years, Business, H.No.3C-17/12, Western Street, Near Brahmam Gari Temple, Eluru, West Godavari District.

10. Offence : Section 138 of Negotiable Instrument Act 1881

11. Plea of accused : Pleaded not guilty

12. Finding of court : Found guilty

13. <u>**Sentence or order**</u>: **In the result,** Accused found guilty for the offence punishable Section 138 of Negotiable Instrument Act 1881 and he is convicted under Section 255(2) of Cr.P.C. and he is sentenced to undergo simple imprisonment for period of one (1) year for the offence under section 138 of N.I.Act. Further the accused shall pay an amount of Rs. 2,00,000/-(Rupees Two Lakhs only),being the cheque amount, to the complainant towards

compensation under Section 357(3) Cr.P.C., within two months from today in default of payment of compensation to undergo simple imprisonment for a period of three months.

14. **Explanation for delay** : This case was taken on file against the accused for the offences under Section 138 r/w 142 of Negotiable Instrument Act 1881 as S.T.C No.680/2022 on 16.12.2022 and Later it is converted into C.C No.223/2024. On 01.06.2023 case copies supplied to the accused under section 207 Cr.P.C and accused was examined under section 251 Cr.P.C and explaining the allegations under section 138 of Negotiable Instrument Act 1881 read over and explained to him in Telugu, he pleaded not guilty and claimed to be tried. On11.08.2023 PW.1 is chief-examined and got marked Ex.P1 to Ex.P7. On 25.09.2023 PW.1 is cross-examined. On 03.10.2023 chief affidavits of PW.2 and PW.3 are filed. On 31.10.2023 PW.2 is chief-examined. On08.11.2023 PW.2 is partly cross-examined. On 28.06.2024 PW.2 is further cross-examined. On 08.07.2024 PW.3 is chief and cross-examined and the learned counsel for complainant reported no further evidence and posted for 313 Cr.P.C examination. On 12.07.2024 accused was examined under section 313 Cr.P.C by explaining the incriminating the evidence appearing against him, he denied the same and reported for no defence evidence, Hence defence evidence is closed and this matter posted for arguments. On 22.07.2024, the learned counsel for accused filed a petition under section 311 Cr.P.C, 311 Cr.P.C Vide Crl.M.P No. 314/24, 315/24, On 04.09.2025 Crl.M.P No.314/2024 is allowed and Crl.M.P No.315/24 is dismissed. On 25.09.2024 in-spite of granting

sufficient time the accused not filed defence evidence. Hence defence evidence is treated as nil and closed and posted for arguments. On 01.10.2024 the counsel for accused filed petitions under section 311 Cr.P.C and 311 Cr.P.C vide Crl.M.P No.435/24, 436/24 and the same were allowed on 08.07.2025 and posted for defence evidence. On 14.07.2025 DW.1 is chief-examined. On 18.07.2025 DW.1 is cross-examined and posted for further defence evidence. On 22.07.2025 further defence evidence is not filed. Hence further defence evidence is closed and posted for arguments. On 24.07.2025 the counsel for accused filed petitions under section 311 Cr.P.C and 311 Cr.P.C vide Crl.M.P No.197/2025, 198/25 and the same were dismissed on 21.08.2025 and posted for arguments. On 26.08.2025 heard arguments of counsel for complainant. The counsel for accused did not come forward for arguments. Hence arguments on behalf of the accused is treated as heard and the matter is posted for Judgment on 01.09.2025. On 01.09.2025 Judgment was pronounced. Hence, the delay.

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Principal Civil Judge (Junior Division),Eluru
-cum-Judicial Magistrate of First Class,Eluru

Copy Submitted to:-The Hon'ble 1st Additional District & Sessions Judge, Eluru

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION)
ELURU-CUM-JUDICIAL MAGISTRATE OF FIRST CLASS, ELURU**

Present: **Sri Shaik Mohammad Abutalib Parveez**
Principal Civil Judge (Junior Division), Eluru

Monday, this the 01st day of September, 2025

Calendar Case No.223 of 2024

Gudavalli Vidya Sagar, S/o.Late Ananda Kumar, Hindu, Male, age 31 years, R/o.D.No.28-1-53/1, Kumar Street, 8th Road, Santhi Nagar, Eluru, West Godavari District. ....**Complainant**

Vs

Kanamarlapusi Srinivasa Rao, S/o.Venkateswara Rao, Hindu, Male, age 50 years, Business, H.No.3C-17/12, Western Street, Near Brahmam Gari Temple, Eluru, West Godavari District. .....**Accused**

This case is coming on 26.08.2025 for final hearing before me in the presence of Sri A.V.S.Surya Rao Advocate for the complainant and Sri G.Srinivasa Rao, Advocate for the accused, upon perusing the material on record and upon hearing the arguments on both sides having stood over for consideration till this day this court delivered the following:-

// J U D G M E N T //

01. This is a complaint filed by the complainant against the accused for the offence punishable under Section 138 of Negotiable Instrument Act (hereinafter it is referred as N.I. Act.)

02. The case of the complainant is as follows:- The complainant is doing real estate business. The accused has borrowed an amount of Rs.5,00,000/-(Five lakhs rupees only) from him on 25.09.2021 for his family necessities and sundry debts and executed a demand promissory note in favour of him, agreeing to repay the same with interest at Rs.2/- per hundred per month with yearly

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compound rests either to him or on his order on demand. The complainant further submits that, in-spite of repeated demands for the repayment of pronote debt to him, personally and through mediators postponing the same on some pretest or the other and finally the accused issued a cheque bearing No.899680 for Rs.2,00,000/- (Two Lakhs rupees) on 29.10.2022 towards part satisfaction on his Dhanalakshmi Bank Ltd, Eluru branch, West Godavari District, and the same was endorsed he presented by his Bank I.e. State Bank of India, Bazar branch, Eluru and surprisingly it was returned as unpaid with a cheque return memo on 01.11.2022 by the complainant banker with an endorsement that as "Account Dormant with return code-88". The complainant further submit that, he got issued a legal notice on 04.11.2022 to the accused calling her to make payment on the dishonored cheque to the accused residing address, the said notice is received the same and got reply with false and untenable allegations dated 22.11.2022 and the accused did not choose either to pay the amount due under the cheque which was bounced. The complainant further submits that, the accused issued a spurious and worthless cheque knowing fully well that there was no amount in his account and accused have also dishonestly induced me and only he has issued the cheque and thereby he has not only committed the offence under section 138 of NI Act, and also liable to punish under section 420 of IPC. The complainant further submits that, he has filed this complaint after fifteen days time given under the notice for the payment of the said cheque amount. Hence, the accused is liable to be punished for the offence under section 138 r/w 142 of N.I.Act.

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03. This case was taken on file against accused for the offences under Section 138 r/w 142 of Negotiable Instrument Act 1881 as S.T.C No.680/2022 Later it is converted into C.C.No.223/2024.

04. On appearance of the accused, copies of the documents were furnished to him as contemplated under Section 207 of Criminal Procedure Code (herein after referred as Cr.P.C.). The accused was examined under Section 251 Cr.P.C., by explaining the substance of accusation under section 138 of N.I. Act made against him in Telugu, for which he denied the same and pleaded not guilty and claimed to be tried.

05. During the course of trial, on behalf of the complainant, the complainant himself was examined as PW.1 and got marked Ex.P1 to Ex.P7 and 2nd attestor of Ex.P1 is examined as PW.2 and scribe of Ex.P1 is examined as PW.3.

06. After closure of the complainant's side evidence, the accused was examined under Section 313 Cr.P.C., by explaining the incriminating material stood against him in the evidence of complainant, to which the accused denied and reported that, he has defence evidence and accused himself is examined as DW.1 and no documents marked on his behalf.

07. Heard arguments on both sides and perused written arguments filed the learned counsel for the accused.

08. <u>Now the points for determination are:-</u>

1) Whether the accused issued the Ex.P2 cheque in favour of complainant for discharging a legally

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enforceable debt or other liability?

2) Whether the complainant has complied with all the legal formalities as per the provisions of Section 138 r/w 142 of Negotiable Instruments Act?

3) Whether the complainant proved the case against the accused for the offence Punishable Under Section 138 of Negotiable Instruments Act, 1881 beyond reasonable doubt?

09. **Point No.1**:-

To prove the case of complainant, as mentioned above stated supra, the complainant got examined himself as PW.1 and got marked Ex.P1 to Ex.P7 and 2nd attestor of Ex.P1 is examined as PW.2 and scribe of Ex.P1 is examined as PW.3. PW.1 in his evidence in chief-examination reiterated the complaint pleadings. In view of the mentioning of the complaint pleadings in the above paragraphs in brief, there is no need to extract the contents in the chief-examination affidavit of PW.1, as the said averments in the complaint and the contents in the chief-examination affidavit of PW.1 are almost one and the same.

PW.2/Veramalla Rajesh, 2nd attest of Ex.P1 in his evidence deposed that, he is the 2nd attestor of the promissory note i.e. 25.09.2021 in the said suit He know the complainant and accused, the accused borrowed an amount of Rs.5,00,000/- (Rupees Five Lakhs only) from the complainant on

25.09.2021 for the family expenses and to discharge sundry debts and on the same day, the accused executed a demand promissory note in favour of the complainant at his house of the complainant and agreeing to repay the same with interest at rate of Rs.2/-per hundred per month, either to the complainant or his order when the demanded and he is the 2nd attestor of the said promissory note Ex.P1 dated 25.09.2021, after receiving the said amount from the complainant, the accused signed on the promissory note Ex.P1. At the time of transaction he is 2nd attestor and one Md Akhil Rehman is the 1st attestor of the above said Ex.P1 Pronote and one M. Sudhakar Reddy is the scribe of the above said Pronote Ex.P1. The entire transaction is in their presence.

PW.3/Medapati Sudhakar Reddy, scribe of Ex.P1 in his evidence deposed that, he is the scribe of the promissory note i.e. 25.09.2021 in the said suit He know the complainant and Accused, the accused borrowed an amount of Rs.5,00,000/- (Rupees Five Lakhs only) from the complainant on 25.09.2021 for the family expenses and to discharge sundry debts and on the same day, the Accused executed a demand promissory note in favour of the complainant at his house of the complainant and agreeing to repay the same with interest at rate of Rs.2/-per hundred per month, either to the complainant or his order when the demanded and he is the scribe of the said promissory note Ex.P1 dated 25.09.2021, after receiving the said amount from the complainant, the accused signed on the promissory note Ex.P1. At the time of transaction he is Scribe and one V.Rajesh is the 2nd attestor and one Md. Akhil Rehman is the 1st attestor of the above said Ex.P1 Pronote. The entire transaction is in their presence.

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To disprove the case of complainant, the accused himself is examined as DW.1 and no documents marked on his behalf.

DW.1/Kanamarlapdi Srinivasa Rao, in his evidence in chief-examination affidavit deposed that, the contents in the complaint are not all true and correct and there is no acquaintance between him and the complainant and he never borrowed the amount and he never issued the cheque as mentioned in the complainant and there is no consideration between them. He did not maintain his bank account in his bank i.e. Dhanalakshmi Bank, Eluru since 2012. he issued the said cheque to one Lingamsetti Sasi Kumar, who is a document writer at Eluru, in business transaction in the year 2013 or 2014 and which is an old cheque and the said Sasi Kumar did not return the said cheque to him after closure of said business transaction and the said cheque was kept with him. Surprisingly the said cheque was used by the complainant for the reasons best known to him and it might be used by the complainant with the illegal assistance of said Lingamsetti Sasi Kumar. The complainant might be created fabricated and forged the said promissory note as mentioned in the complaint as he never executed the said document in favor of the complainant. He further deposed that, he already got issued reply notice dated 22.11.2022 to the legal notice dated 04.11.2022 got issued by the complainant with real state of facts as mentioned above by requesting the complainant to send for the attested copies of promissory note and cheque for giving befitting reply, but the complainant got issued rejoinder notice dated 24.11.2022 with false averments without sending the said attested copies of promissory note and cheque for his

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verification and for giving befitting reply, hence, the above complaint filed by the complainant is not maintainable under law. Therefore, he prays the Hon'ble Court to dismiss the complaint, in the interest of justice.

In this case, The main contention of the accused is that, there is no acquaintance between him and the complainant and he never borrowed the amount and he never issued the cheque as mentioned in the complainant and there is no consideration between them. The another main contention of the accused is that, he did not maintain his bank account in his bank i.e. Dhanalakshmi Bank, Eluru since 2012 and he issued the said cheque to one Lingamsetti Sasi Kumar, who is a document writer at Eluru, in business transaction in the year 2013 or 2014 and which is an old cheque and the said Sasi Kumar did not return the said cheque to him after closure of said business transaction and the said cheque was kept with him. The another main contention of the accused is that, Surprisingly the said cheque was used by the complainant for the reasons best known to him and it might be used by the complainant with the illegal assistance of said Lingamsetti Sasi Kumar and the complainant might be created fabricated and forged the said promissory note as mentioned in the complaint as he never executed the said document in favor of the complainant. The another main contention of the accused is that, he already got issued reply notice dated 22.11.2022 to the legal notice dated 04.11.2022 got issued by the complainant with real state of facts as mentioned above by requesting the complainant to send for the attested copies of promissory note and cheque for giving befitting reply, but the complainant got issued rejoinder

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notice dated 24.11.2022 with false averments without sending the said attested copies of promissory note and cheque for his verification and for giving befitting reply. In order to prove the above contention of the accused mentioned above stated supra, the accused mainly relied on his oral evidence as DW.1 and no documents marked on his behalf. In this case,the complainant examined himself as PW.1 and also got marked Ex.P1 to Ex.P7. To discharge his initial burden the complainant filed the Ex.P1 is promissory note dated 25.01.2009, Ex.P2 is cheque bearing No.899680 dated 29.10.2022, Ex.P2 is cheque return memo dated 01.11.2022, Ex.P4 is office copy of legal notice 04.11.2022, Ex.P5 is reply notice dated 22.11.2022, Ex.P6 is rejoinder to reply dated 24.11.2022, Ex.P7 is postal acknowledgment and the complainant further examined 2nd attestor of Ex.P1 as PW.2 and scribe of Ex.P1 as PW.3. In this case, In the cross-examination of PW.1 to PW.3 by learned counsel for accused at length, he could not be elicited no useful material to disprove the issuance of Ex.P2. Hence, the complainant has fulfilled all the requirements and essential ingredients to prove the offence against the accused. In such case presumption under section 118 of N.I.Act comes in favour of complainant. Then the burden shifts on the accused to disprove the issuance of Ex.P2 by him. In this case, On perusal of evidence of DW.1, DW.1 in his evidence in cross-examination categorically admitted that, ***"he did not give any police complaint against Lingamsetti Sasi Kumar with regard to misuse of his blank signed cheque"***. DW.1 in his evidence further admitted that, " ***he did not send the EX.P1 for expert opinion in order to show that the signature contained in Ex.P1 is forged one"***. In this case, the accused not produced any

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cogent evidence in order to prove the contentions mentioned above stated supra. In this case, On perusal of the cross-examination of PW.1 to PW.3, the main contention of the accused is that, the complainant forged his signature and foisted this case against the accused. In this case, If really, the complainant forged signatures of the accused with the help of attestors and scribe of Ex.P1 in Ex.P1 and Ex.P2, why the accused did not give any police complaint to complainant after filing of this case against him. If really the signatures contained in Ex.P1 and Ex.P2 are not belongs to the accused, why the accused did not take any steps to send the Ex.P1 and Ex.P2 for expert opinion in order to prove that, the signatures contained in Ex.P1 and Ex.P2 are not belongs to him. In this case, On perusal of the evidence of PW.2, PW.2 in his evidence categorically deposed that, ***this case transaction took place in his presence and he acted as 2nd attestor of Ex.P1 promissory note and M.Sudhakar Reddy scribed the promissory note".*** On perusal of the evidence of PW.2 & PW.3 are corroborated with the evidence of PW.1 along with Ex.P1 to Ex.P7 on material aspects. In this case, the accused is not filed any cogent evidence in order to prove his contentions mentioned above stated supra. In this case, the above of above admissions of DW.1/accused clearly shows that, the contentions of the accused mentioned above stated supra are totally false. In this case, the evidence of PW.1 to PW.3 corroborated with contents of Ex.P1 to Ex.P7 in all material aspects. In this case, the learned counsel for accused argued that, The cheque belongs to an account that has been dormant from 2020 onwards, with no banking transactions carried out and a cheque issued from a dormant account is

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not a valid instrument in law and the complainant’s allegation that the accused issued a cheque in 2022 is factually impossible. The learned counsel for accused further argued that, the Ex.P2 cheque returned by the bank authorities with a reason that “Account Dormant-88”, but not insufficient funds as such section 138 of N.I Act is not applicable in this case. In this case, The "Account Dormant" means, as per the banking rules and regulations, when the savings account or current account has not been operated for a long time, the bank authority would list out such accounts and keep them account dormant and once the said account is declared as dormant account, unless some actual transaction or deposit of amount is made by the account holder, the said account remain an account of inactive." Account Dormant Literally means, 'account inactive' or 'torpid'. Therefore, when cheque returned unpiad with an endorsement "Account Dormant" it means account inactive for wants of funds. The law is very clear that even if the bank account is "88-DORMANT ISF" or closed the person who issued the cheque from the said account and the cheque bounces, said person is responsible for it and such a cheque bounce will be under the ambit of Section 138 of Negotiable Instruments Act. In this case,the material evidence placed before the court, it clearly establishes that the accused had issued Ex.P2/cheque for an amount of Rs.2,00,000/- to the complainant and the said cheque presented on the said day it was returned without honoring the same on account of "88-ACCOUNT DORMANT" maintained in the account of the accused. Further on perusing the Ex.P4 to Ex.P7 and all these discloses that, in-spite of the intimation of the dishonour of cheque accused did not comply the demand made in the legal notice. All these facts clearly establishes that, accused committed an offence under section 138 of N.I. Act. In this case, On perusal of above admissions of DW.1, it is clearly shows that, in order to evade the debt due under Ex.P2, the accused has taken different false pleas. At this juncture, ***This court gone through the decision of Hon'ble Supreme court of India in Bir Singh Vs Mukesh Kumar in CRIMINAL APPEAL NOS.230-231 OF 2019(@ SLP(CRL) NOS. 9334-35 OF 2018), dated: 200.02.2019, wherein the Hon'ble Lordships held that;***

> *36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.*
> *37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*
> *38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*
> *39. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not dis entitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.*
> *40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.*
> *41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to*

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the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

On perusal the above decision stated supra, If a signed blank cheque are voluntarily presented to a payee, towards some payment, the payee may fill up the amounts and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. In this case accused did not place any cogent evidence to show that, the Ex.P2 did not issue for legally enforceable debt and In the absence of any cogent evidence, the contentions of accused mentioned above stated supra are not tenable. The accused had to prove in the trial, by leading cogent evidence that there was no debt or liability. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. On perusal of above decision Hon'ble Apex Court, this Court observed that, the facts as referred above are applicable to the present case on hand. In these facts and circumstances of the case, I am of the opinion that, the accused has taken a formal defence of denying his issuance of Ex.P2. Taking into consideration of Exs.P1 to Ex.P7 and the material on record, I am of the opinion that, the complainant proved that, the accused issued Ex.P2 to the complainant for discharge of payment of a debt owned by him under Ex.P2. In this case, In cross-examination of PW.1 to PW.3, nothing is elicited to prove the contentions of accused. As discussed above, the complainant by examining PW.1 proved the issuance of Ex.P2 by the accused. In view of issuance of Ex.P2, it is established that the accused fell due amount to the complainant. In these facts and circumstances of the case, I am of the opinion that, the accused has taken a formal defence of denying his issuance of Ex.P2. Taking into consideration of Ex.P1 to Ex.P7 and the material on record, I am of the opinion that, the complainant proved that the accused issued Ex.P2 cheque to the complainant for discharge of payment of a debt owned by him under Ex.P2. As per Ex.P1 to Ex.P7, it is established that the accused has to pay an amount of Rs.2,00,000/- as per Ex.P2 cheque issued by accused to the complainant dated 29.10.2022. On perusal of material on record, it clearly reveals that, the accused issued Ex.P2 cheque to complainant for the amount due under Ex.P1. This court further observed that, once issuance of cheque I.e Ex.P2 admitted by the accused, burden always shifts to accused to prove Ex.P2 did not issue by him for legally enforceable debt. On perusal of the above

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admissions of DW.1 clearly shows that, the contentions of the accused mentioned above stated supra are totally false. This court further observed that, though the accused took the above pleas as mentioned supra, nothing is adduced evidence to prove his contentions. In view of issuance of Ex.P2 by accused, it is established that, the accused fell due amount to the complainant. In these facts and circumstances of the case, Taking into consideration of Ex.P1 to Ex.P7 and the material on record, I am of the considered opinion that, the complainant proved that, the accused issued Ex.P2 to the complainant for discharge of debt due under Ex.P1. In view of above discussion and in the facts and circumstances of the case presumption under section 138 of N.I. Act comes in favour of the complainant. The burden is on the accused to rebut the said presumption, but accused failed to rebut presumption favour in complainant. The point is answered accordingly in favour of the complainant and against the accused.

10. **Point No.2**:- When once it is proved that, the accused issued Ex.P2 cheque in favour of complainant to discharge legally enforceable debt due under Ex.P1, the next question that has to be decided is whether the complainant has followed all the legal formalities before filing of this complaint and whether this complaint is within the provisions laid down under Section 138 r/w 142 of N.I. Act.

On perusal of material available on record, Ex.P2 cheque was presented in the Bank of the complainant i.e., State Bank of India, Bazar Branch, Eluru and the same was returned by the state Bank of India, Bazar Branch, Eluru on

01.11.2022 with an endorsement "Account Dormant with return code-88" as per Ex.P3. The complainant got issued legal notice Ex.P4 through Registered Post on 04.11.2022 to the accused and the same were received and the same was marked as per Ex.P5 and accused gave reply notice on 22.11.2022 and complainant gave rejoinder reply on 24.11.2022 to it. The complainant filed complaint on 06.12.2022. Considering the dates mentioned above and the material on record, I am of the opinion that the complainant has followed all the legal formalities as contemplated under the provisions of Section 138 r/w 142 of N.I.Act. This point is answered accordingly in favour of complainant and against the accused.

11. <u>**POINT NO.3**</u>:- In view of my discussion on point Nos.1 and 2 and in the facts and circumstances of the case, I am of the considered opinion that, the complainant firm has proved its case against the accused for the offence under section 138 of Negotiable Instruments Act, 1881 beyond reasonable doubt. This point is answered accordingly in favour of the complainant firm and against the accused.

12. In the result, the **accused is found guilty** for the offence punishable **Under Section 138 of Negotiable Instruments Act, 1881** and he is convicted Under Section 255 (2) Cr.P.C.,

Dictated to Stenographer Grade-III, typed by her directly on computer system, corrected and pronounced by me in the open court this the 01st day of September, 2025.

SHAIK MD ABUTALIB PARVEEZ
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Date: 2025.09.01 13:25:08 +0530

Principal Civil Judge (Junior Division),Eluru
-cum-Judicial Magistrate of First Class,Eluru

When the accused is questioned with regard to the quantum of sentence, he stated that, **he has kids and his family depends on him.** He further submitted that, if he is sent to jail his entirely family will be put to hardship. He pleaded mercy of this court. Therefore, he prayed to take lenient view by letting him of by imposing some fine only. But in his opinion the accused does not reserve any such leniency in view of the gravity of offence proved against him, hence, he is not entitled for benefit of Probation of Offenders Act and for applying the provisions of Section 360 Cr.P.C. However having regard to the facts and circumstances of the case and submissions of the accused, it would be just and proper to take a reasonable view in imposing the sentence against him instead of imposing maximum sentence prescribed for the offence proved.

In the result, the accused is convicted for the offence under section 138 of N.I.Act under section 255 (2) of Cr.P.C. and she is sentenced to undergo simple imprisonment for period of one (1) year for the offence under section 138 of N.I.Act. Further the accused shall pay an amount of Rs. 2,00,000/- (Rupees Two Lakhs only), being the cheque amount, to the complainant towards compensation Under Section 357(3) Cr.P.C., within two months from today in default of payment of compensation to undergo simple imprisonment for a period of three months.

The Accused was never in judicial custody. Hence set off under Section 428 Cr.P.C., does not arise. The accused is informed about his right of appeal against the judgment and sentence passed against him by this court and also availability of free legal aid for the purpose of appeal.

Typed by me personally, corrected and pronounced by me in the open court, on this the 01st day of September, 2025.

SHAIK MD ABUTALIB PARVEEZ
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-cum-Judicial Magistrate of First Class,Eluru

// Appendix of evidence //

Witness examined

For Complainant

PW.1	Gudavalli Vidya Sagar
PW.2	Veramalla Rajesh
PW.3	Medapati Sudhakar Reddy

For Accused:-

DW.1	Kanamarlapusi Srinivasa Rao

Exhibits marked for Complainant

Ex.P1	Promissory note dated 25.01.2021
Ex.P2	Cheque bearing No.899680 dated 29.10.2022
Ex.P2	Cheque return memo dated 01.11.2022
Ex.P4	Office copy of legal notice dated 04.11.2022
Ex.P5	Reply notice dated 22.11.2022
Ex.P6	Rejoinder to reply dated 24.11.2022
Ex.P7	Postal acknowledgment

Exhibits marked for Accused

Nil

Material objects marked

Nil

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