KACB010003832026

Presented on : 05-03-2026
Registered on : 05-03-2026
Decided on : 03-08-2026
Duration : 04 months 29 days

IN THE COURT OF PRL. DISTRICT AND SESSIONS JUDGE, AT : CHIKKABALLAPURA

Dated this the 3rd day of August 2026

Present
Sri. T.P.RAMALINGE GOWDA,
B.Sc., LL.M., M.B.A.
Principal District & Sessions Judge,
Chikkaballapura.

Criminal Appeal No.22/2026

APPELLANT/S: G.Krishnappa
s/o Dandu Chinna Narasimhappa,
aged about 52 years,
r/at Chenchurayanapalli village,
Gulur hobli, Bagepalli taluk,
Chikkaballapura District.
(**Represented by Sri.K.S.N., Advocate**)

//Versus//

RESPONDENT/S: Lokesh
s/o Venkatarayappa,
aged about 45 years,
r/at Inaminchenahalli village,
Kasaba hobli,
Chikkaballapura taluk & District.
(**Represented by Sri.A.M.N., Advocate**)

JUDGMENT

This is an appeal preferred under Section 415 of BNSS by the accused in C.C.No.749/2019 questioning the legality and correctness of the judgment of conviction and sentence, dated 12.02.2026 passed by the I-Addl. Civil Judge & JMFC, Chikkaballapura, wherein he had been convicted for the offence punishable under section 138 of Negotiable Instruments Act (Herein after referred in short as ***'NI Act'***) by the learned Magistrate.

2. For the sake of convenience, the parties are referred as per their rank before the trial court.

3. The necessary facts in brief of the complainant's case are as under:

The accused and the complainant are well known to each other. The accused approached the complainant during the first week of November 2016 and sought for financial assistance for a sum of Rs.3,00,000/- to fulfill his family and legal necessities. The accused has also assured the complainant that, if aforesaid sum was lent he would repay the same within four months. Taking into consideration his acquaintance the complainant has paid a sum of Rs.3,00,000/- to the accused. At the time of issuing the said loan amount the accused had issued a cheque bearing No.441990 for a sum of Rs.3,00,000/- to be drawn at Pragathi Gramina Bank, Bagepalli branch, dated 16.02.2017 in favour of the complainant. As per the assurance and promise of the accused, the complainant presented the said cheque for encashment on 17.02.2017. But the said cheque was returned unpaid with an endorsement as “Funds Insufficient” on 20.02.2017. Thereafter the complainant has brought to the notice of the accused about dishonour of cheque and requested him to make arrangements for repayment of cheque amount. But the accused refused and neglected to repay the said amount. The complainant has got issued a legal notice, dated 18.03.2017 through his counsel to the accused demanding him to repay the amount covered under the cheque. The said notice was served upon the accused. Thereafter also the accused has not made any payment. On these grounds complaint came to be registered.

4. Trial court after recording the sworn statement of complainant took cognizance and registered the case as C.C.No.749/2019. In pursuance of service of summons, the accused appeared before the trial court and released on bail. His plea was recorded. Accused claimed to be tried.

5. In support of his case the complainant was examined as Pw.1 and got marked 11 documents as per Ex.P1 to P11.

6. After closure of complainant's side evidence, accused has been subjected for examination as required under Section 313 of Cr.P.C. in order to enable him to offer any plausible explanation about the incriminating evidence and circumstances brought by the complainant against him during trial. Accused has denied the entire case of the complainant as false and he has chosen to lead defence evidence. But he has not adduced any defence evidence.

7. The learned Magistrate on appreciating the oral and documentary evidence found the accused guilty of the offence punishable under Sections 138 of Negotiable Instruments Act. Accordingly, he has convicted the accused for the above said offence by sentencing him to pay fine of Rs.4,55,000/- and in default to undergo simple imprisonment for a period of six months. Further out of the said amount, Rs.4,50,000/- is ordered to be paid to the complainant and it was ordered to adjust Rs.5,000/- towards the exchequer.

8. Being aggrieved by the said judgment of conviction and sentence, it has been challenged by the appellant/accused on the following grounds:

It is contended that complainant was not having financial capacity to lend such huge amount, but the same has not been considered by the trial court. The trial court has not properly appreciated the defence set up by accused. The trial court without applying its judicious mind has convicted the accused. The judgment of the trial court is erroneous, vexatious, capricious and arbitrary to law. Therefore, he has prayed to allow the appeal.

9. Heard the arguments on both sides. Learned counsel for the appellant/accused has relied on the decision in the case of ***Smt.N.Padmavathi vs. D.Rajanna*** in ***Criminal Revision Petition No.1138 of 2021.***

10. Being heard the arguments and perused the record, the points that arise for my consideration are:

> 1) Whether the complainant has proved his case beyond reasonable doubt that the accused has availed a loan of Rs.3,00,000/- from the complainant in the first week of November 2016

and he has issued the impugned cheque, dated 16.02.2017 towards repayment of the said amount and the same is dishonoured and thereby he has committed an offence punishable under Section 138 of Negotiable Instruments Act?

2) Whether the appellant proves that the impugned judgment is not proper and correct and thereby calls for interference?

3) What order?

11. My finding to the above points are as follows;

Point No.1 : ***In the Negative.***

Point No.2 : ***In the Affirmative.***

Point No.3 : As per final order, for the following;

REASONS

12. **Point No.1 & 2**:- As both the points are interconnected with each other, they are taken together for common discussion in order to avoid repetition of facts and evidence.

13. During the course of arguments learned counsel for appellant ***Sri K.S.N.*** has vehemently argued that the complainant has filed false case against the accused to make unlawful gain and inspite of that the trial court has not properly appreciated the admissions elicited from the

mouth of complainant. He has further argued that complainant has given handful of admissions which are very much contrary to the complaint averments, but same has not been properly appreciated by the trial court. Added to this complainant has also failed to prove the source of his income and very lending of loan. Inspite of that the trial court has erroneously drawn the presumption in favour of complainant under Section 138 of N.I. Act. Accordingly, he prayed to re-appreciate the complaint averments and evidence of complainant and accordingly to acquit the accused by setting aside the impugned judgment of conviction.

14. Percontra the counsel for respondent **Sri A.M.N.** has argued with all vehemence that the trial court has properly appreciated the case of the complainant and evidence available on record. In fact, the accused has not at all adduced any oral or documentary evidence in support of his defence that he has not borrowed loan and the impugned cheque was not issued towards repayment of said debt. It is also argued that accused has failed to raise any legally acceptable defence not only before the trial court, but also before this court and therefore, absolutely

nothing is there on record to appreciate and accordingly prays to confirm the impugned judgment.

15. Before proceeding to consider the rival contentions, it would be appropriate to refer the provisions of law under Section 118 and 139 of Negotiable Instruments Act, which reads as under;

> ***"118. <u>Presumptions as to negotiable instruments</u>.—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) to (f) **********
>
> ***(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 proving that the holder is a holder in due course lies upon him.***

> **"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".**

16. *Thus, meaningful reading of Section 118 of N.I. Act would indicates that the negotiable instrument like cheque, DP note and any other documents would carries presumption in their favour that they are issued for consideration. Presumption can also be drawn about the date, amount mentioned therein, the contents and signature of drawer etc. Similarly, Section 139 of N.I. Act would envisaged that, unless the contrary is proved court shall presume that every cheque is issued towards repayment of debt or liability in full or part. The said presumption is not a conclusive presumption, rather it is a rebuttable presumption and thereby it can be rebutted by the accused by offering any plausible explanation or by adducing proof that the said cheque was not issued towards repayment of debt or liability. Here it is worthy to mention that the standard of proof in respect of case of the complainant and defence of accused are not one and the same, rather it varies.* ***Therefore, it is trite law that like that of prosecution, the***

complainant must prove his case beyond reasonable doubts. Whereas accused is required to established his defence on the principles of preponderance and probabilities and not on the principles of beyond reasonable doubt. *At the same time it is also pertinent to keep in mind that, as has been enunciated by the Hon'ble Apex Court in case of* ***Rangappa v. Mohan; 2010(11) SCC 441*** *and reiterated in catena of decisions,* ***accused is need not bound to step into the witness box to give evidence in support of his defence. Rather he can very well demolish the case of the complainant on the basis of materials available on record or by eliciting admissions from the mouth of complainant, which are contrary to the complaint averments.***

17. By keeping in mind the aforesaid provisions of law and well settled principles of law, let me critically examine the case of the complainant with that of evidence available on record in the light of defence set up by accused. As has been pleaded at para 2 and 3 of the complaint filed by the complainant it is his specific case that ***"the accused has approached the complainant during first week of November 2016 and sought for financial assistance for a sum of Rs.3,00,000/- to fulfill his family and legal necessities and the accused***

has also assured the complainant that if aforesaid sum were lent he would repay the same within four months. Taking the long acquaintance with the accused the complainant has paid the said sum of Rs.3,00,000/-. At the time of receiving the said loan amount the accused had issued a post dated cheque bearing No.441990 for a sum of Rs.3,00,000/- to be drawn at Pragathi Gramina Bank, Bagepalli branch, Chikkaballapura District, dated 16.02.2017".

18. Upon meaningful reading of the aforesaid complaint averments it is ample clear that ***firstly,*** accused has borrowed and he has lend loan of Rs.3,00,000/- in the first week of November 2016 for his family and legal necessities. ***Secondly,*** accused has undertaken to repay the said loan within four months and in consideration thereof on the same day he has issued ***a post-dated cheque bearing No.441990, dated 16.02.2017.*** These two aspects are more significant in appreciating the case of the complainant in the light of the admissions elicited from his mouth.

19. To elaborate except pleading in the complaint that in the first week of November 2016 the accused has approached and borrowed a loan of Rs.3,00,000/- from the complainant, he has not pleaded whether

the said loan was lent by way of cash or through cheque or through online payment. So also he has not pleaded anything about actual date of asking and paying coupled with whether the said amount was kept with him on that day or how it was arranged or mobilized by him. Again he has not pleaded about in whose presence the said loan was given and where it was given. Pleading of all these material particulars are very much necessary in order to establish the case of the complainant. Because here the alleged loan is not a small amount of Rs.50,000/- or 1 lakh, but involved huge loan of Rs.3,00,000/- and thereby non-pleading of those material aspects would give scope to raise suspicion about the genuinity of alleged transaction. In this respect it is useful to place reliance upon the decision of Hon'ble Apex Court in the case of ***Mr.K.Honnappa Hegde vs. Mr.Nirthyananda Shetty*** in ***Criminal Appeal No.589 of 2014 (A), dated 29.04.2026***. Wherein his lordship at para 20 held that;

> ***"20. The non-mentioning of the date of lending the loan even as held by the Apex Court is a serious circumstance creating plausible defence to be held in favour of the accused, therefore, the presumption provided under Section 139 of the Negotiable Instruments Act under the fact circumstances of the matter cannot be drawn in***

> ***favour of the complainant-appellant. The accused-respondent has raised preponderance of probabilities in his favour from the evidence brought on record by the complainant".***

20. The aforesaid observation of mine is very much relevant in view of evidence elicited from the mouth of complainant/Pw.1 which are not only contrary to the complaint averments, but also to the evidence adduced by him. To buttress my observation it is useful to mention the excerpt of his cross-examination, dated 19.01.2024 wherein he has deposed that ***"He is doing agriculture and also holding tractor and lorries. He is supplying stones and sand for the contract work of the accused and made transaction with him for about 4-5 years. He is earning about Rs.18,00,000/- from mining and Rs.7-8 lakhs per year from agriculture and he use to keep the amount earned in mining in his bank account"***. But on this respect he has not at all pleaded anything in the complaint. Not only that why he has not obtained any security documents while lending such a huge loan or it was given in the presence of anybody is also not explained. Absence of all these material particulars in the complaint would leads to raise suspicion about the genuineness of alleged loan transaction.

21. Be it noted, it is worthy to mention that, as per the settled position of law in a case like this i.e., offence punishable under Section 138 of N.I. Act, initially the complainant is need not required to be plead and prove the source of money or his financial capacity. But when it was seriously disputed by the accused then it is absolute necessary for the complainant to prove his financial capacity by adducing cogent and satisfactory evidence by way of rebuttal evidence. In this respect reliance can be placed to the judgment of Hon'ble High Court of Karnataka in case of ***N.Padmavathi v. D.Rajanna, reported in 2024(3) KCCR 2256***. Wherein her ladyship at para 15 by relying upon the judgment of Hon'ble Apex Court in the case of ***Tedhi Sing Vs. Narayan Das Mahant (Tedhi Singh),*** reported in ***2022 SCC OnLine SC 302,*** held that;

> ***"When the accused has failed to send reply to the legal notice, challenging the financial capacity of the complainant, at first instance, complainant need not prove his financial capacity. <u>However, if during the course of trial accused takes up such a defence, then it is necessary for the complainant to prove his financial capacity, when he allegedly advanced the amount and that towards repayment of the same, accused has issued</u>***

<u>the cheque</u>. Similarly, in APS Forex Vs. Shakti International Fashion Linkers Pvt. Ltd (APS Forex), (2020) 12 SCC 724 also, <u>the Hon'ble Supreme Court held that whenever accused raises issue of financial capacity of complainant in support of his probable defence, despite the presumption in favour of the complainant regarding legally enforceable debt under Section 139 of N.I. Act, onus shifts again on the complainant to prove his financial capacity by leading evidence, more particularly when it is a case of giving loan by cash and thereafter issue of cheque</u>".

(underlined by me and given emphasis)

22. The aforesaid ratio is squarely applicable to the case on hand. If the said analogy is applied to this case, complainant has been thrashed out by subjecting him for cross-examination on this respect and elicited that ***"2016ರಲ್ಲಿ ನನ್ನ ಬಳಿ 3,00,000/- ಹಣ ಇತ್ತು ಎಂದು ರುಜುವಾತು ಪಡಿಸಲು ಬ್ಯಾಂಕಿನ ಪಾಸ್ ಬುಕ್ ನ್ನು ಹಜರುಪಡಿಸಲು ನನಗೆ ಯಾವುದೇ ತೊಂದರೆ ಇರುವುದಿಲ್ಲ. ನನಗೆ ಸೇರಿದ ಒಟ್ಟು ಎರಡು ಬ್ಯಾಂಕ್ ಖಾತೆಗಳು ಇವೆ. ನನ್ನ ವಾರ್ಷಿಕ ಆದಾಯ 25,00,000/- ಎಂದು ಹೇಳಿದ್ದು ಸದರಿ ವಿಚಾರವಾಗಿ ನಾನು ಆದಾಯ ತೆರಿಗೆಯನ್ನು ಪಾವತಿ ಮಾಡುತ್ತಿರುವುದಿಲ್ಲ".*** This evidence indicates

that, even though he has contended that, he was earning income of Rs.25,00,000/- per annum from agriculture and business he has not disclosed the same to government and not paid tax.

23. Nodoubt, in view of aforesaid cross-examination complainant has adduced his further evidence by way of rebuttal and got marked accunts statement at Ex.P6 and R.T.Cs at Ex.P7 to P11. But when he has been again subjected for cross-examination on 29.12.2025 Pw.1 has deposed that ***"ನಿ.ಪಿ.6ರಲ್ಲಿ ಆರೋಪಿತನಿಗೆ ಹಣವನ್ನು ನೀಡಿರುತ್ತೇನೆ ಎನ್ನುವಂತಹ ತಿಂಗಳಲ್ಲಿ ನಿಮ್ಮ ಖಾತೆಯಲ್ಲಿ ಹಣ ಇತ್ತಾ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಆ ಸಮಯದಲ್ಲಿ ನನ್ನ ಖಾತೆಯಲ್ಲಿ ಅಷ್ಟು ಹಣ ಇರಲಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನೀವು ಆರೋಪಿಗೆ ನೀಡಿರುತ್ತೇನೆ ಎನ್ನುವಂತಹ 3,00,000 ಹಣಹಿ ನಿಮ್ಮಲ್ಲಿ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ"***. Which undoubtedly indicates that complainant has miserably failed to place any piece of document before the court to establish his financial capacity. In otherwords his rebuttal evidence is not suffice to accept his source. Consequently, it indirectly supports the contention of accused that, complainant is not possessed adequate source to lend such huge loan. Mere production of R.T.Cs and possessing vehicles or carrying quarry business would not comes to his aid. Because on this

respect he neither pleaded nor shown proof about generation of income. That apart as noted supra, complainant has not been specifically pleaded the date of lending of loan. Here, what is significant to be emphasized is that, the Government of India has introduced the demonetization on 08.11.2016. As such legal tendering of currency notes of Rs.500/- and Rs.1,000/- has been withdrawn and consequently imposed strict guidelines to duly withdraw money from bank and cash transaction. But on this respect neither the complainant nor the trial court have bestowed their attention.

24. In view of the aforesaid discussion and analysis in my considered view complainant has utterly failed to prove his case. Consequently, it is not possible to convict the accused only on the basis of presumption available under Section 139 of N.I. Act. Because accused has succinctly demolished the case of the complainant by eliciting handful of contradictory admissions from his mouth against the complaint averments. In this respect reliance can be placed to the decision of the Hon'ble Apex Court in case of ***Basalingappa v. Mudibasappa*** reported in ***2019 AIR SCW 198.*** But the trial court without appreciating all these material aspects, blindly pleased to

convict the accused by drawing the presumption available under Section 139 of N.I. Act by dehorsing the aforesaid contrary admissions of complainant, which is not proper and correct. Therefore, impugned judgment calls for interference, otherwise it would leads to miscarriage of justice. Accordingly, ***point No.1 is answered in the negative and point No.2 is answered in the affirmative.***

25. **Point No.3**: In view of my findings on point No.1 & 2, I proceed to pass the following:

ORDER

Appeal filed by the appellant/accused under Section 415 of BNSS, 2023 is hereby allowed.

Consequently, the judgment of conviction and sentence passed by the I-Addl. Civil Judge & JMFC, Chikkaballapura in C.C.No.749/2019, dated 12.02.2026 is hereby set aside and accused is set at liberty.

Send back the trial court records along with a copy of this judgment.

(Dictated to the STENOGRAPHER GRADE-I directly on computer, revised and corrected by me, signed and then pronounced in the Open Court on this the 3rd day of August 2026)

T P RAMALINGE GOWDA

Digitally signed by T P RAMALINGE GOWDA
Date: 2026.08.07 14:49:57 +0530

(T.P.RAMALINGE GOWDA)
Prl. District and Sessions Judge,
Chikkaballapura.