

KACB310008202023



**IN THE COURT OF THE PRL. CIVIL JUDGE
& JMFC, CHINTAMANI**

Present:

Smt. Shakunthala .R, LL.B , LL.M
Prl. Civil Judge & JMFC, Chintamani.

C.C. No. 1031/2023

Dated this the 06th day of July-2026

COMPLAINANT: Sri.K.Shivakumar,
S/o K.V Krishnappa,
Aged about 38 years,
R/at Konganahalli Village,
Kaiwara Hobli,
Chintamani Town,
Chikkaballapura District.

[By Sri. C.K.K., Advocate]

V/s

ACCUSED: Sri. R.M Srinatha,
S/o Muniyappa,
Aged about 33 years,
R/at Ramapura Village,
Ammanalluru Post,
Vemgal Hobli,
Kolar Taluk & District.

[By Sri. D.K., Advocate]

J U D G M E N T

The complainant has filed this complaint u/sec. 200 of Cr.P.C. against the accused for the offences punishable u/sec.138 and 142 of Negotiable Instrument Act and prayed for compensation.

2. **The case of the complainant in brief fact is that;**

The complainant and accused are having faithful relationship mutual acquaintance with each other with the acquaintance and friendship, the accused came and approached the complainant requested to pay a hand loan amount of Rs. 4,80,000/- to meet family and legal necessities of accused legal purpose. After ascertaining the accused capacity of loan, the complainant is agriculturist and proprietor of SLV Electronics and home appliances, shop at Kaiwara cross, Chintamani Taluk as such he paid a sum of Rs. 4,80,000/- to accused by way of cash in complainant home on 10.09.2022 for said purposes. The accused has in turn agreed to return the said sum within three months, the complainant had personally approached and demanded the accused to repay the said loan amount which the accused has borrowed from the complainant. When the complainant again demanded to repay said sum,

the accused instead of paying cash to the complainant, he issued a cheque bearing No.983682 for a sum of Rs.4,80,000/- to be drawn at State Bank of India, H.Cross branch, Sidlaghatta Taluk, dated 20/01/2023 in favour of the complainant. The complainant presented the cheque through his bank i.e., Canara Bank, Kaiwara Branch, Chintamani Branch, on 23/01/2023 for collection. But, said cheque returned back without honoring with an endorsement as **“Account Closed”** on 23/01/2023. Thereafter the complainant got issued legal notice to the accused on 08/02/2023 calling upon the accused to make payment of the dishonoured cheque amount. The notice through RPAD to the accused and the accused was received the said notice on 15.02.2023. The accused in spite of which failed to repay the amount and also did not tender any reply to the said notice. The accused has committed the offence punishable U/Sec 138 of N.I Act. Hence, complainant is constrained to file this complaint.

3. After taking the cognizance of the offence, sworn statement of complainant was recorded and process was issued to the accused. The accused appeared before the court through his counsel and got enlarged on bail. The substance of accusation was read over and explained to

the accused, wherein he pleads not guilty and claimed to be tried.

4. Further the complainant in order to prove his case, he got examined as PW.1 and got marked documents Ex.P1 to Ex.P5. Thereafter inspite of issuing NBW against the accused number of times, but accused was not secured. It reveals that, accused is intentionally avoiding the process of court in order to drag on the proceedings. Wherefore, this court holds that, accused is intentionally avoiding the service of court notice/warrant hence he cannot be secured in future also. As this is summary trial proceedings, in order to avoid delay in dispensation of justice, and as per Section 313(1)(b) proviso of Cr.P.C., states that, where the court has dispensed the personal attendance of accused, it may dispense examination under Section 313 of Cr.P.C. It reveals that, in summons case/summary proceedings court may dispense the examination of accused. As stated above, accused intentionally avoiding the court proceedings. Hence, the statement of accused as required U/Sec. 313 of Cr.P.C. is dispensed with and defence evidence was taken as Nil.

5. The learned counsel for complainant submitted his argument, but accused has not submitted his arguments.

6. Heard the learned counsels for the complainant submitted his argument, but accused has not submitted his arguments.

7. The points that arise for my consideration are:

1. ***Whether the complainant has made out all ingredients of Sec. 138 of N.I Act to prove the guilt of the accused?***

2. ***What Order?***

8. My answers to the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

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

REASONS

9. **Point No.1:** Complainant filed this complaint under Section 200 of Cr.P.C. alleging that, accused has committed offence punishable under section 138 of Negotiable Instrument Act. The Complainant contended that, the accused for repayment of amount he had issued cheque for Rs. 4,80,000/-. Thereafter complainant present the said cheque for encashment, which returned dishonored with a shara **“Account Closed”**. Subsequently

complainant issued legal notice to the accused. Accused not complied to the said notice, hence complainant filed this complaint. After filing of this complaint, sworn statement was recorded and summons was issued to accused. Accused appeared through counsel and got enlarged on bail.

10. Thereafter, this court recorded plea and accused pleaded not guilty. To prove the case complainant filed his chief-in-examination affidavit and got examined as P.W.1. In his chief examination affidavit he reiterated the averments of the complainant. In support of his case he has produced the documents which are marked as Ex.P1 to Ex.P5. **Ex.P1** is the cheque in question said to have been issued by the accused. **Ex.P2** is the bank endorsement, on perusal of same which reveals that the Ex.P1 cheque was dishonored for the reason Funds Insufficient". **Ex.P3** is the office copy of the legal notice **Ex.P4** is the postal receipt **Ex.P5** is the postal acknowledgment. All these documents goes to show that after dishonour of the cheque and after receiving the bank endorsement the complainant had issued the demand notice to the accused within time. Thereafter completion of

15 days from the date of service of notice complaint came to be filed within time.

11. The learned counsel for the complainant submits that complainant proved the case both by the oral and documentary evidence brought on record. Complainant clearly establishes the ingredients of Section 138 of Negotiable Instrument Act. The oral and documentary evidence by complainant is fully corroborated with each other. It shows the guilt of accused. Hence, prays to convict the accused.

12. On careful perusal of the entire oral and documentary evidence, the admitted facts are that there is not dispute that Ex.P1 cheque belongs to the accused and it was dishonored as per Ex.P2 endorsement and notice has been sent as per Ex.P3. Per contra, except appearance there is no defence evidence has been placed by accused ie,. There is no rebuttal evidence to disbelieve complainant case. On the other hand, on perusal of the evidence of PW.1 and Ex.P1 to Ex.P5 documents are clear that accused has issued Ex.P1 cheque for legally enforcable debt, thereafter it was dishonored as per Ex.P2 document, thereafter complainant has issued notice as per Ex.P3. The accused inspite of intimation the accused has not complied

as per section 138 of N.I Act. So the attitude of accused indicates to the court that he has intentionally, to deceive the complainant has issued Ex.P1 cheque in order to deprive the amount involved in Ex.P1. The presumption under section 139 of N.I. Act is a presumption of law; it is not a presumption of fact. This presumption has to be raised by the court in all the cases once the factum of dishonor is established. The onus of proof to rebut this presumption lies on the accused. The standard of such rebuttable evidence depends on the facts and circumstances of each case. Such evidence must be sufficient to prove the case. Therefore a mere explanation is not sufficient to repeat this presumption of law. Hence, it can clearly hold that the complainant clearly proved the case.

13. It is pertinent to note that, even though the accused pleaded not guilty and claimed to be tried; accused did not chosen to cross examination PW.1. Even though repeated issuance of NBW, the accused was not secured. It shows that accused is intentionally avoiding the process of the court in order to drag on the proceedings. As this is a summary trial proceedings, in order to avoid delay in dispensation of justice, the accused statement as

required U/s 313 of Cr.P.C. has been dispensed with the defense evidence taken as Nil.

14. Law says, where any cheque drawn by a person on an account maintained by person 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 or any debt or other liability, is returned by the bank unpaid, for Funds Insufficient, then it is offence under section 138 of Negotiable Instrument Act. Here, complainant clearly proved by oral, documentary evidence that the accused drawn the cheque in favour of complainant for repayment of amount, which returned unpaid for want of amount in the account. Hence, complainant undoubtedly established all the aspects. Thereafter, complainant issued legal notice to the accused, then filed this complaint. Wherefore, complainant fulfilled all the ingredients of section 138 of Negotiable Instrument Act. Hence, presumption of section 118 and 139 of Negotiable Instrument Act goes in favour of complainant. Accused failed to rebut the presumption which lies in favour of the complainant. Accordingly accused is liable for conviction for the offence punishable under section 138 of N.I. Act, because the materials placed by the complainant

corroborates with each other with respect to the involvement of legally recoverable debt under Ex.P1 document as per the ratio laid down by the ***Hon'ble Apex Court in 2014 (12) SCC 625 in Ramdas S/o Khelu Naik V/s Krishnanand S/o Vishnu Naik.***

15. Further, on perusal of the entire materials, admittedly the case of the complainant is unchallenged by the accused, as such this court no hesitation to believe the case of the complainant as true and correct on principles of presumption enunciated by the ***Hon'ble Apex Court in the ruling in 2015 (8) SCC 378 13 C.C.No. 675/2018 between T. Vasantha Kumar V/s. Vijayakumari.*** Further, in the absence of iota of evidence, This court has no hesitation about capabilities of the complainant for having of funds of Rs. 4,80,000/ prior to the payment to the accused. So, when the complainant has proved his case as stated supra, this court has no hesitation to believe the capacity of the complainant for having said funds as per the ration of ***Hon'ble Apex Court reported in 2015 (1) SCC 99 between K.Subramani V/s K. Damodara Naidu.*** Further, on perusal of Ex.P1 to Ex.P5 documents. Evidence of PW.1 was recorded. PW.1 as already stated above, the said evidence is unchallenged. So, in the absence of

disproof of complainant case i.e., rebuttal evidence on behalf of the accused, I have no hesitation to believe the case of the complainant i.e, he has proved his case as per the standard of proof laid down by the **Hon'ble Apex Court in the rulings reported in 2012 (5) SCC 443 between Heinz India Private Limited and Another V/s State of Uttar Pradesh and Other.** Further, the entire materials indicates to the court that complainant has filed the complaint in a proper manner i.e., within the stipulated time under section 138 of N.I. Act and further there is no endeavors on behalf of the accused to disprove the case of the complainant except appearance through his advocate. As such, in pursuance of the ratio rendered by **Hon'ble Apex Court in 2014 (5) SCC 590 between Indian Bank Association and Others V/s Union of India and Others.,** this court followed the procedure as well as guidelines issued by the Hon'ble Apex Court for expeditious disposal of case. Accordingly, this court is of the considered opinion that accused is liable to be convicted for the offence punishable under section 138 of N.I. Act and this court answer the **Point No.1 in the Affirmative.**

16. Point No.2 : In view of my above findings and reasons, this court proceed to pass the following;

ORDER

Accused person found guilty.

Acting under Section 255(2) of Cr.P.C. the accused is convicted for the offence punishable u/s 138 of Negotiable Instruments Act.

The accused is sentenced to pay a fine of Rs.4,65,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for a period of six months.

However, out of the aforesaid amount, the accused has already paid Rs.20,000/- to the complainant. As such, the said amount shall be deducted from the total cheque amount. Therefore, the remaining amount would be Rs 4,60.000/-.

By exercising the power conferred under Section 357(1) of Cr.P.C. Rs.4,60,000/- is ordered to be paid to the complainant, as compensation and Rs.5,000/- is to be confiscated to the State.

The bail bond of the accused and surety shall stand cancelled.

**Supply the free copy of the
judgment to the accused.**

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in open court on this the 06th day of July-2026)

Sd/-

(Shakunthala.R)

Prl. Civil Judge and JMFC,
Chintamani

A N N E X U R E

List of witness examined for the complainant:

PW-1 : Shivakumar

List of documents exhibited on behalf of complainant:

Ex.P-1 : Cheque
Ex.P-1(a) : Signature of accused
Ex.P-2 : Bank Memo
Ex.P-3 : Office copy of Legal notice
Ex.P-4 : Postal receipt
Ex.P-5 : Postal acknowledgment

List of witness examined for the accused:

Nil

List of documents exhibited on behalf of accused:

Nil

Sd/-

Prl. Civil Judge and JMFC,
Chintamani .