

KACB310038952023



**IN THE COURT OF PRINCIPAL CIVIL JUDGE &
J.M.F.C, AT: CHINTAMANI**

***Present:* SRI SHAKUNTHALA.R
B.A., LL.B., LL.M.,
Prl. Civil Judge & J.M.F.C.,
Chintamani.**

CRIMINAL CASE No. 1803/2023

DATED THIS 03rd DAY OF JUNE-2026

Sri. K.N Murali,
S/o V. Narayanaswamy,
Aged about 42 years,
R/at Kurutahalli Village,
Kallahalli Post,
Kasaba Hobli,
Chintamani Taluk,
Chikkaballapur District.

.....COMPLAINANT

(Rep.By Sri S.S.KAdv.)

/Versus/

Sri.K.N Manjunatha,
S/o. Late Narasimhaiah,
Aged about 40 years,
R/at I.B Quarters,
(Pravasi Mandira)
Chintamani Town,
Chikkaballapura District.

And also

Sri. K.N Manjunatha,
Aged about 40 years
"D" Group employee,
Assistant Executive Office,
PWD Sub Division,
Chintamani Town,
Chikkaballapura District.

.....*ACCUSED*

(Rep.By S.E.G. Adv.)

Date of offence	:	19.07.2023
Date of report	:	19-07-2023
Arrest of the accused	:	Accused released on bail
Name of the complainant	:	K.N Murali
Date of recording of evidence	:	19.07.2023
Date of closure of evidence	:	19.07.2023
Offence alleged	:	U/s.138 of N.I.Act
Opinion of the Judge	:	Accused found guilty

J U D G M E N T

The present complaint is filed under section 200 of Cr.P.C against the accused alleging an offence punishable under section 138 of Negotiable Instrument Act.

2. Brief facts of the case of the complainant:

That the complainant and the accused are friends and had mutual acquaintance with each other. The accused with this regard on 10.08.2022 had approached the complainant with a request for hand loan of Rs. 2,50,000/- for the purpose of his

family legal and other necessity expenses and also to discharge debts contracted by him with others. Further the accused assured to the complainant that he will repay the said loan amount within nine months and has issued a cheque bearing No.667333 dated 02.06.2023. The said cheque was drawn on State Bank of India, Chintamani Branch, Chintamani Town, for Rs.2,50,000/-. As per the instructions of the accused the complainant had presented the said cheque for encashment on 06.06.2023 through his banker Axis Bank Limited , Chintamani Branch for collection. The said cheque was dishonoured on the same for the reason "*Exceeds Arrangments* " on 08.06.2023 and the same was intimated to the complainant. The complainant got issued a demand notice to the accused on 19.06.2023 to both the address through his counsel to the accused through RPAD post acknowledgment to the accused addreses due notice to the 1st address of the notice was unserved to the accused and returned on 27.06.2023 as postal shara Party Absent and the 2nd adress of the notice was unserved and returned on 30.06.2023 as postal shara Addressee Absent. The same has constrained to complainant to file the present complaint.

3. After recording of the sworn statement of the complainant and on verifying the documents, cognizance was taken against the accused for the offence punishable under section 138 of Negotiable Instrument Act. In pursuance to the summons issued to him, the accused appeared before the court and was enlarged

on bail. The plea of accused was recorded. The substance of accusation was read over and explained to the accused in Kannada language known to him. The accused pleaded not guilty and claimed that he has defence to be made. In view of the decision of Hon'ble Supreme Court in *Indian Banks Association & Ors. Vs. Union of India & Anor.* reported in (2014) 5 SCC 590 case, the sworn statement of the complainant was considered as his examination-in-chief and the matter was posted for cross examination of PW-1.

4. In order to prove his case, the complainant has got him examined as PW-1 and got marked five documents at Ex.P.1 to P-7. There afterwards the complainant closed his side. In spite of grant of sufficient time, the accused failed to get PW-1 cross examined. Hence cross examination of PW-1 was taken as *nil*.

5. Thereafter the accused was examined under section 313 of Cr.P.C. The accused denied the incriminating evidence appearing against him and he has chosen to lead any evidence on his behalf. The accused neither cross examined nor lead any defence evidence and has not produced any documents in support of his case. Hence the defence evidence taken as closed and the matter was posted for arguments. It is pertinent to note here that when the matter was posted for judgment, the accused remained absent before court. Hence this court issued warrant against the accused.

6. Heard the arguments advanced by the counsel for the complainant and the accused. Perused the materials on record.
7. The points that arise for consideration of this Court are:

POINTS

- i. Whether the complainant proves that the accused issued a post dated cheque bearing No.667333 dated 02.06.2023 for Rs.2,50,000/- drawn on State Bank of India, Chintamani Branch, towards the payment of loan and the same was dishonoured for reason ' Exceeds Arrangements ' and that in spite of issuance of notice to the accused, he has failed to repay the amount due in cheque within the stipulated period?*
- ii. What order or sentence?*

8. This court answers to the above points as hereunder:

Point No.1: In the *affirmative*

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

REASONS

9. **Point No.1:** It is pertinent to note here that the examination-in-chief of PW-1 was recorded by this court. In view of the decision of Hon'ble Supreme Court in *Mehsana Nagarik Sahkari Bank, Ltd., V/s Shreeji Cab Co. & Ors.* reported in 2014 AIR SCW 1816, this court is empowered to take into consideration the evidence recorded by predecessor and proceed

with the matter. Hence this court proceeds to pass the judgment.

10. In view of the present legal position as held by our Hon'ble High Court as well as Apex Court in a catena of decisions, as well as relevant provisions of the Act, this Court has to see whether the complainant has complied with all the requirements as contained in Sec.138 of Negotiable Instruments Act, so as to bring home the guilt of the accused for the alleged offence. If so, whether the accused is able to rebut the legal presumption available to the complaint U/s 139 of the Act by adducing probable defence or not. Thus in the light of this settled propositions of law, the materials on record are to be assessed.

11. Now on the basis of the materials available on record, *firstly*, it is to be verified as to whether the complainant has complied with the provisions of sec.138 of Negotiable Instruments Act to get the cause of action to file this complaint. Besides his evidence, the complainant has produced certain documents marked in support of his contentions. Ex.P-1 is the original cheque bearing no. 667333 dated 02/06/2023. Ex.P-2 is the bank return endorsement. Ex.P-3 is the copy of legal notice. Ex.P-4 & Ex.P-5 are the postal receipts. Ex-P6&Ex.P-7 are the Postal covers.

12. As per Ex.P-3, the legal notice was issued to the accused on 19.06.2023 and the same was served on 19.06.2023. The complaint

came to be filed on 19.06.2023 and the same was later presented before the jurisdictional court in view of Negotiable Instrument(Amendment) Act 2015. Thus the materials on record suggest that the complainant has complied the mandatory provisions of Sec.138 of The Negotiable Instruments Act i.e. presentation of cheque within the statutory period for encashment, issuance of legal notice within prescribed period to the accused and filing of complaint within limitation period as per Sec.142 of the Act.

13. The *second* aspect for consideration is whether the complainant proves that the cheque belongs to the accused. It is pertinent to note here the fact that the signature on the cheque belongs to the accused is denied by him during the course of his examination under section 313 of Cr.P.C. Thus the burden is upon the accused to explain before the court as to how the cheque signed by him came into the possession of the complainant.

14. The *next* aspect for consideration is whether the accused has successfully rebutted the presumption available in favour of the complainant with probable and convincing evidences. The same has to be examined on the basis of the material available on record. It is pertinent to note here that the evidence lead by the complainant has remained unrebutted and unchallenged. The accused has not strained himself in cross examining PW-1

nor by entering the witness box. The burden was upon the accused to cross examine the complainant. No such efforts are made by the accused. Further it appears that the legal notice issued to the accused was also not got replied by him. This is another circumstance which goes against the accused.

15. There is a presumption that cheque was drawn for discharge of liability of drawer is to be raised by court in every case. The nature of the rebuttable evidence is to be on high footing. In this case, the accused has miserably failed to rebut the presumption available in favour of the complainant as he has neither got PW-1 cross examined nor lead any evidence on his behalf.

16. By analyzing the entire evidence, it is clear that the accused has failed to rebut the presumption, as discussed supra. Per contra the complainant by producing the original cheque, office copy of the legal notice and other related documents has proved before the court that the accused has failed to repay the loan amount to the complainant.

17. In view of foregoing discussions, it can be concluded that the complainant has established through cogent and convincing evidence, the fact of issuance of the cheque for discharge of legally enforceable debt, dishonoring of the same for want of sufficient funds, issuance of legal notice within stipulated time, failure on the part of accused to repay the amount within

stipulated period. Therefore accused is held to have committed an offence punishable under section 138 of the N.I Act. Accordingly point No.1 is answered in the *affirmative*.

18. **Point No.2:** In the light of the aforesaid discussion, having regard to the facts and circumstances of the case and also taking into consideration cheque issued was for repayment of loan amount, the contemporary litigation expenses, 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.2,55,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for a period of six months.

By exercising the power conferred under Section 357(1) of Cr.P.C. Rs.2,50,000/- 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 03rd day of
June-2026)

Sd/-

(Shakunthala.R)

Prl. Civil Judge and JMFC,
Chintamani

ANNEXURES

I. List of witness examined on behalf of the complainant:-

PW-1 : K.N Muralli

II. List of Witness examined on behalf of the Defence:-

NIL

III. List of documents marked on behalf of the complainant:-

Ex.P-1 : Cheque
Ex.P-1(a) : Signature of Accused
Ex.P-2 : Return Memo
Ex.P-3 : Copy of legal notice 19.06.2023
Ex.P-4&5 : Postal Receipts
Ex.P-6&7 : Postal covers

IV. List of documents marked on behalf of for the Defence:-

NIL

Sd/-

Prl. Civil Judge & JMFC.,
Chintamani

