IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND J.M.F.C AT GOWRIBIDANUR

Dated this 3rd day of August 2026

:: PRESENT ::
Smt. PUSHPA .D
B.Com, L.L.B.,

Addl. Civil Judge & J.M.F.C, Gowribidanur

CC No.823/2016

Complainant	:	Smt. B.S. Ramanjinamma W/o. Venkatesh Reddy, Aged about 65 years, R/at Balachikkanahalli Village, Manchenahalli Hobli, Gowribidanur Taluk, Chikkaballapur District. **(Represented by Sri. K.L., Advocate)**

// Versus //

Accused	:	Sri. Chinnappa S/o. Late Narayanappa, Aged about 45 years, R/at. Vatadahosahalli Village, Nagaragere Hobli, Gowribidanur Taluk, Chikkaballapur District. **(Represented by Sri. V.V.K., Advocate)**

Date of institution of Case	:	23.02.2016
Nature of Offence	:	U/s. 138 of Negotiable Instruments Act, 1881.
Date of commencement of	:	02.08.2016

recording of evidence

Date on which the judgment was pronounced	:	03.08.2026
Opinion of the Judge	:	Convicted

(PUSHPA D.)
ADDL. CIVIL JUDGE & JMFC
GOWRIBIDANURU

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

The case arises out of a private complaint filed by the complainant against the accused under Section 200 of Cr.P.C., for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. **The case of the complainant, in brief, is as under;**

The accused and complainant are known to each other. The accused and the relatives of the complainant, have visited the house of the complainant and requested for financial assistances for immediate legal and family necessities in the month of December, 2012 but the complainant informed the accused to come and receive such amount in cash during the month of January, 2013. The accused came to the house of the complainant in the first week of January, 2013 and obtained a hand loan of Rs.2,00,000/- and assured to repay the said amount within second week of April, 2013. When the complainant met the accused in the second week of April, 2013, the accused has given a post dated cheque bearing no.141746 dated 29.04.2013 for Rs.2,00,000/- drawn on ICIC Bank, Malleshwaram Branch, Bangalore-03, in favour of complainant for the purpose of repayment of the said amount, and agreed that he would maintain the sufficient balance for discharge of his liability. That the complainant presented the said cheque for encashment through his banker i.e., State Bank of Mysore, Thondebhavi, on 29.04.2013, but the said cheque was returned by the bank with an endorsement stating that the cheque was dishonored due to “Account Closed”. That the accused received debit note and unpaid shara from the bank, but the accused neglected the same and refused to make payment to the complainant. That the complainant issued a legal notice dated 21.05.2013 through his counsel, calling upon the accused to repay the said amount within 15 days from the date of receipt of the notice and that the said legal notice was not served on the accused, the notice was return unserved with postal endorsment stating “Party not in station, hence returned to sender", this indicate that the accused deliberately avoided the said notice in order to evade legal consequences. That the accused has committed the offence punishable under Section 138 if the Negotiable Instruments Act and that the complaint is within time. Hence, this complaint.

3. Initially, the complaint was filed by the complainant at Bengaluru Jurisdiction, thereafter this case has been transferred to this court vide order dated 25.01.2016. The complainant has presented the private complaint before this court on 24.02.2016. After taking cognizance for the offence punishable U/Sec 138 of Negotiable Instrument Act, sworn statement of the complainant was recorded. As the complainant had complied the mandatory requirements of Section 138 of Negotiable Instrument Act, this Court issued summons to the accused. After service of summons accused appeared through his counsel and got enlarged on bail.

4. The plea of the accused was recorded and contents of the plea was read over and explained to the accused in the language known to him, he denied the same and pleaded not guilty and submitted he has defense to make. Hence, the case was posted for complainant's evidence.

5. In order to prove the case, the complainant has been examined as P.W-1 and he has relied upon 5 documents in support of his case which have been marked as Ex.P-1 to P-5(a). Inspite of sufficient opportunity, the accused failed to appear before the court for his examination as required u/s.313 of Cr.P.C was dispensed with at the fault of the accused.

6. Heard the arguments and perused the entire materials available on record.

7. The following points arise for my consideration:

POINTS FOR CONSIDERATION

1. Whether the complainant proves that, towards discharge of liability due and payable, the accused got issued one post dated cheque bearing no.141746 of ICIC Bank, Malleshwaram Branch, Bangalore-03, for a sum of Rs.2,00,000/- on 29.04.2013, but when the complainant has presented the said cheque to the bank for encashment, the same was dishonored and returned with an endorsement as "Account Closed" after that, the complainant got issued legal notice dated 21.05.2013 to the accused and thereby the accused committed the offence punishable U/Section 138 of Negotiable Instrument Act?

2. What order ?

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

<u>Point No.1</u> : In the **Affirmative;**

<u>Point No.2</u> : As per **the final order for the following**;

<u>:: R E A S O N S ::</u>

9. **<u>Point No. 1 :</u>-** This Court is of the opinion that it need not repeat the entire averments made in the complaint, as this Court has already narrated the same at the inception of this judgment.

10. However, it is well settled that whenever the complainant alleges that the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, the Court must consider whether there existed a legally enforceable debt and that the accused had issued the cheque in discharge of the said legally enforceable debt. The complainant must also prove that the said cheque was dishonored because of Accout Closed in the account of the drawer/accused or for any other valid reason.

11. It is also pivotal that the complainant adheres to the timeline and the procedure laid out under Section 138 of the negotiable instruments act. The said provision of law is reproduced herewith a better understanding:

<u>"Section 138: Dishonour of cheque for</u>

insufficiency, etc., of funds in the account.— *Where any cheque drawn by a person on an account maintained by him 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 debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this Section shall apply unless—

(a) the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability".

The essential ingredients to be fulfilled in order to attract the liability under Section 138 of the Negotiable Instruments Act are as follows:

(a) The payee/complainant must present the cheque for encashment within three months from the date on which it is drawn;

(b) The payee/complainant must issue a legal notice to the drawer of the cheque/accused within 30 days from the date of receipt of endorsement from the bank regarding the dishonour of cheque;

(c) The drawer of the cheque/accused fails to pay the said amount to the payee/complainant within 15 days from the date of receipt of the legal notice.

12. As stated above, the complainant has got himself examined as P.W-1 by filing his examination-in-chief by way of affidavit, as envisaged under Section 145 of the Negotiable Instrument Act and reiterated the entire averments of the complaint. Ex.P-1 is the cheque bearing No.141746 dated 29.04.2013 for Rs.2,00,000/-, ICIC Bank, Malleshwaram Branch Bangalore-03, Ex.P1(a) is the signature of the accused, Ex.P-2 is the bank endorsement dated 04.05.2013 which discloses that the

aforesaid cheque has been dishonored due to the reason 'Account Closed'. As per clause (a) of proviso to Section 138 of the Negotiable Instrument Act, the cheque is to be presented for encashment within three months or within the period of its validity from the date on which the cheque has been issued. The Ex.P-1 appears to have been presented on i.e., 13.07.2013/24.02.2016 and the same is also stated by the complainant in his complaint and it appears to have been presented within the prescribed period.

13. Further, as per clause (b) of proviso to Section 138 of the Negotiable Instruments Act, the complainant is required to issue legal notice in writing, to the drawer/accused making a demand for repayment of the said cheque amount within 15 days from the date of receipt of information about the dishonor of the cheque. The Ex.P-3 is the office copy of the legal notice dated 22.05.2013, Ex.P-4 is the postal receipt and Ex.P-5 is the RPAD Cover, Ex.P5(a) is the legal notice in RPAD Cover and Ex.P-3 to Ex.P-5 disclose that the legal notice was issued within 30 days from the date of receipt of the bank endorsement marked as Ex.P-2. Thus, the provisions of clause (a) & (b) of proviso to Section 138 of the Negotiable Instruments Act have been complied with.

14. Ex.P-4 and P5 are the postal receipt and returned RPAD envelop issued by the complainant to the accused was not served on the accused, because he was not received the said notice, hence the postal cover containing notice ‘Party not in station, hence return to sender’, this indicate that the accused deliberately avoided receiving the said notice in order to evade legal consequences, and after excluding 15 days from the date of receipt of the legal notice, the complainant appears to have filed the private complaint on 13.07.2013/24.02.2016 which is within the time prescribed under clause (b) of Section 142 of the Negotiable Instruments Act and as such, this Court is of the opinion that that the complainant has complied all the necessary components of Section 138 of NI Act

The Hon’ble Supreme Court of India in *C.C. Alavi Haji vs Palapetty Muhammed & Anr* has held as follows:

> *“14. 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. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed".

15. If notice issued to the accused was returned with an endorsement 'refused', or 'not available in the house', or 'house locked, or 'shop closed' or 'addressee not in station' same have to be presumed as notice is duly served, if the notice was addressed to the correct address. Nonetheless, it is held that the notice was deemed served to the accused, as held by the Hon'ble Supreme Court of India referred supra and after excluding 15 days from the date of receipt of the legal notice, the complainant appears to have filed the private complaint on 13.07.2013/24.02.2016 is within the time prescribed under clause (b) of Section 142 of the Negotiable Instruments Act and as such, this Court is of the opinion that that the complainant has complied all the necessary components of Section 138 of N I Act.

16. Under criminal jurisprudence, the prosecution has to establish the guilt of accused beyond reasonable doubt. However, in case of proceedings under Section 138 of the Negotiable Instruments Act, proof beyond reasonable doubt is subject to the presumptions envisaged under Sections 118, 139 and 146 of the

Negotiable Instruments Act. The offence under Section 138 of N.I. Act is committed for dishonor of the cheque as well as for failure of the drawer of the cheque to make repayment within 15 days of receipt of notice of dishonor, as is held by a plethora of decisions of various Courts.

17. It is also trite to discuss the settled positions of law in cases pertaining to the offence under Section 138 of the Negotiable Instruments Act. In a criminal trial, the onus of proof usually lies upon the prosecution but in cases related to the dishonor of cheques, the onus of proof is placed upon the accused to disprove and rebut the statutory presumptions available to the complainant. This departure from the fundamental principle of a criminal trial is provided under Section 118(a) read with Section 139 of the Negotiable Instruments Act. It is apropos to refer to the said provision of law before proceeding further. Section 118(a) of the Act reads as follows:

> *"**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 ***<u>139:- Presumption in favor of holder</u>****.—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."*

18. It is abundantly clear from these two provisions that the Court is bound to presume that the cheque in question was issued in discharge of a legally enforceable debt and the onus of proof is upon the accused to rebut this presumption. But the Courts cannot rely solely on the presumption against the accused as the said presumption is rebuttable and <u>upon the existence of a reasonable suspicion</u>, <u>the burden shifts upon the complainant to prove that the issuance of the negotiable instrument was in discharge of a legally enforceable debt</u>. In order to rebut the statutory presumption under N.I Act, the accused is not expected to prove his defense beyond reasonable doubt as is expected of a complainant in a criminal trial. The accused may adduce direct evidence to prove that the cheque in question was not supported by any consideration or that there was no debt or liability to be discharged by him.

19. It is pertinent to note that the **Hon'ble Supreme Court of India** in the case of **Hiten P.Dalal v/s Badrinath Banerjee**

reported in **(2001)6 SCC 16** has observed that the Court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated but at the same time, a bare denial regarding the passing of the consideration and existence of the debt would not serve the purpose of the accused. It was further observed in the said case that to disprove the presumption in favor of the holder of the cheque under N.I Act, an accused should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or that their non-existence was so probable that a prudent man, would under the circumstances of the case, act upon the plea that they did not exist.

20. With that said and discussed, let us examine certain other landmark judgments governing the trial of cheque bounce cases. The Hon'ble Supreme Court of India in the case of ***Rohithbhai Jivanla Patel v/s State of Gujarat*** *reported in* ***(2019)18 SCC 106*** has held that after the presumption under Section 139 of the N.I Act is drawn, the onus of proof shifts on the accused and unless the accused discharged this onus of proof by

bringing on record facts and circumstances to show preponderance of probabilities tilting in his favor, any doubt regarding the source of funds to advance the loan amount to the accused could not be raised. It was further held that the presumption regarding the existence of a legally enforceable debt is a rebuttable presumption and that the standard of proof that the accused must put forth is preponderance of probabilities. It was further held that the accused has to bring on record such facts and circumstances which may lead the Court to conclude that either the consideration did not exist or that its non-existence was so probable that a prudent man would act upon the plea that the consideration did not exist. That once such rebuttal evidence is adduced and accepted by the Court, the onus of proof shifts back to the complainant and the presumptions under Sections 118 and 139 of the N.I Act will not come to the rescue of the complainant. It is also appropriate to rely upon the decision of the ***Hon'ble High Court of Bombay*** *in* ***Mr.Krishna P. Morajkar v/s Mr.Joe Ferrao and Another*** *reported in* ***2013 SCC Online Bom 862*** wherein it was viewed that if an amount not disclosed in the income tax returns was held to be irrecoverable, it would itself defeat the provision of Section 138 of the Act and that unless the Courts discourage such flimsy defenses, acceptability of cheques would decrease and make the Court an indirect party to lawlessness. Whereas, in the case of ***Basalingappa v/s Mudibasappa*** *reported in* ***(2019) 5 SCC 418****, the* ***Hon'ble Supreme Court of India*** has held that once the execution of the cheque is admitted by the accused, Section 139 of the N.I Act mandates a presumption that the cheque was drawn for the discharge of any debt or other liability and that the presumption is a rebuttable presumption, the onus of which is on the accused to raise a probable defence and that the standard of proof for rebutting the presumption is that of preponderance of possibilities.

21. It is clear from these decisions that once the accused discharges this onus of proof, the complaint must prove his case beyond reasonable doubt. An essential ingredient of Section 138 of the N.I.Act is that the cheque in question must have been issued towards the discharge of a legally enforceable debt or liability. Sections 118 and 139 of the N.I. Act provide certain presumptions that shall be raised regarding consideration, date, receipt, transfer, endorsement and regarding the holder in due course of the negotiable instrument. These presumptions are mandatory presumptions that are required to be raised in a case involving a

negotiable instrument but these presumptions are not conclusive presumptions and are rebuttable in nature. As these presumptions are the mandate of the law, they are to be raised in every case involving a negotiable instrument. Such being the case, it is for the accused to rebut the presumption under Sections 118 and 139 of no N.I Act and to show that the cheque in question was not issued towards any legal enforceable debt or liability. Keeping these important ingredients of Section 138 of the N I Act, these principles and position of law in mind, let us proceed to examine the oral evidence adduced by the parties to this case.

22. The case of the complainant is that the accused borrowed a sum of Rs.2,00,000/- for his legal and family necessities and, towards discharge of the said liability, the accused issued cheque marked as Ex.P-1. Upon presentation, the said cheque came to be dishonoured. During the course of cross-examination, the complainant deposed that in the month of January 2013, the accused came to her house seeking a hand loan. Though she could did not recollect the exact date, she stated that the accused came in the afternoon. She further deposed that she had obtained a sum of Rs.2,00,000/- from her husband and advanced the same to the accused, who had assured her that he

would repay the amount within one month. She also admitted that the accused had issued the cheque in question to her. She further stated that she paid the loan amount in Rs.500/- denomination currency notes. When questioned as to the source from which her husband had arranged the amount, she deposed that her husband had sufficient funds and therefore gave the money to her for advancing the loan to the accused. Even though cross examined at length, nothing substantial has been elicited to discredit her version regarding the advancement of the loan or the issuance of the cheque. though she was unable to state the exact date on which the accused approached her, such inability is natural, considering that the transaction had taken place several years prior to the recording of her evidence. The inability to recollect the exact date does not affect the core of the case. The complainant has also explained the source of the funds by stating that her husband had the necessary money and handed it over to her for advancing the loan. The accused has not produced any material to demonstrate that the complainant's husband did not possess the financial capacity to arrange the said amount. Therefore, the explanation offered by the complainant regarding the source of funds cannot be rejected merely on the basis of suggestions made in cross-examination. In the absence of any convincing rebuttal evidence from the accused, the above evidence does not create any doubt regarding the complainant's version.

23. With regard to the service of the legal notice, during the course of cross-examination, the complainant deposed that she knew the residential address of the accused and had mentioned the said address in both the complaint and the legal notice. She further deposed that the legal notice was issued to the said address. Upon perusal of Ex.P-4 and Ex.P-5, namely the postal receipt and the returned RPAD cover, it is seen that the postal article was returned with the endorsement "Party not in station, hence returned to sender." The said notice was dispatched to the correct address of the accused. The postal endorsement does not indicate that the address was incorrect or that the addressee was not residing at the said address. In such circumstances, the endorsement amounts to deemed service of notice. In view of the presumption available under Section 27 of the General Clauses Act, 1897, and the law laid down by the Hon'ble Supreme Court in the judgment referred to supra, the legal notice is deemed to have been duly served upon the

accused. Therefore, the contention regarding non-service of notice is not tenable.

24. In the present case, the complainant has proved the initial burden placed upon him. The accused has not produced any cogent evidence to disprove the contention of complainant and the material placed by the complainant are more probable when weighed against the defence taken by the accused. Further, the accused has not stepped into the witness box to rebut the contention of the complainant. The accused has cross-examined the complainant/P.W-1, but nothing worthwhile has been elicited to rebut the presumptions provided under law. Moreover, Examination of accused U/s.313 of Cr.P.C was dispensed at the fault of accused and thus he has not utilized the opportunities to explain incriminating materials. From the overall consideration of the evidence on record, it is forthcoming that, accused has not taken probable defence to rebut the statutory presumption. Hence, in view of the above discussions, this court considered opinion that, the accused has not rebutted the presumption in favour of complainant by any direct evidence or circumstantial evidence. Thus, the complainant proves that, there is existence of legally recoverable debt as per Ex.P.1 cheque beyond all reasonable doubt

that, the accused has committed the offence punishable U/Sec.138 of Negotiable Instrument Act. Accordingly, the case of the complainant is acceptable. Complainant proved that, accused has intentionally not maintained sufficient amount in his account to honor the disputed cheque. Therefore, this court answered the **Point No.1 in the Affirmative.**

25. **Point No.2 :** In view of the reasons stated and discussed above, the complainant has proved the guilt of the accused punishable U/Sec. 138 of NI Act. Considering the facts and circumstance involved in the case, this Court is of the opinion that, the complainant is entitled for the amount. Accordingly, in the light of above detailed discussion, this court proceed to pass the following;

O R D E R

Accused is found guilty of offence punishable U/Sec. 138 of Negotiable Instrument Act-1881.

Acting U/Sec. 255(2) of Cr.P.C. accused is hereby convicted for offences punishable U/Sec. 138 of Negotiable Instrument Act-1881 and he is sentenced to pay fine of Rs.2,20,000/-. In default of accused shall undergo simple imprisonment for the period of for 06 months.

The accused is directed to pay the said amount to the complainant within one month from the date of this judgment.

Out of the total fine amount a sum of Rs.2,15,000/- shall be paid to the complainant as compensation U/Sec.357 of Cr.P.C, and Rs. 5,000/- shall be remitted to the state exchequer.

Further, it is also made clear that in view of proviso to Sec. 421(1) of Cr.P.C. the accused shall not be absolved of his liability to pay compensation amount of Rs.2,15,000/- awarded U/Sec.357 of Cr.P.C. even if he under goes the default sentence.

Bail bond and surety bond of the accused stands cancelled.

Office is directed to supply a free copy of this judgment to the accused forthwith.

(Typed by me on my own computer, corrected and then pronounced by me in open court on 3rd August 2026)

Sd/-
(PUSHPA D.)
ADDL. CIVIL JUDGE & JMFC
GOWRIBIDANURU

::ANNEXURE::

List of witnesses examined on behalf of the Complainant:

P.W.1 : Smt. Ramanjinamma

List of witnesses examined on behalf of the Accused:

NIL

List of documents marked on behalf of the Complainant:

Ex.P1	:	Cheque
Ex.P1 (a)	:	Signature of Accused
Ex.P2	:	Bank Endorsement
Ex.P3	:	Legal Notice
Ex.P4	:	Postal receipt
Ex.P5	:	RPAD Postal Cover
Ex.P5 (a)	:	Notice in RPAD

List of documents marked on behalf of the Accused:

NIL

Sd/-
(PUSHPA D.)
ADDL. CIVIL JUDGE & JMFC
GOWRIBIDANURU