KACB610011642021

IN THE COURT OF THE SR.CIVIL JUDGE & JMFC., AT SIDLAGHATTA

Dated this the 9th day of April-2026

:**PRESENT**:

SRI. **MOHAMMED ROSHAN SHA**., MA. L L B.,
Sr. Civil Judge and JMFC.,
Sidlaghatta

C.C.623/2021

COMPLAINANT : Sri.Lakshmana.B.N
S/o B.K.Narayanaswamy
Aged about 76 years
R/at Handiganala village
Kasaba Hobli
Sidlaghatta Taluk
Chikkaballapura District

(Rep by C.K.V., Advocate)

V/s

ACCUSED : Smt.Soumya Deepak
W/o Deepak Rao
Aged about 46 years
R/at No.28, 3rd cross
2nd stage Mico Layout
Aricere, Bangalore 76

(Rep by S.N.C Advocate)

J U D G M E N T

The complainant has filed private complaint under section 200 of Cr.P.C., against the accused for the offence punishable under section **138 of Negotiable Instruments Act.**

2. The brief case of the complainant is that the complainant and accused are well known to each other since several years. In lieu of the above said relation, the accused approached to complainant on 15/07/2021 for financial assistance for the purpose of her legal necessities and turn over of accused business. The accused approached the same at resident of complainant. The complainant has paid said amount for Rs.3,50,000/- to the accused on dated 19/07/2021. Thereafter the accused issued cheque bearing No.000009 drawn at Kotak Bank, JP Nagar, Bangalore Branch by putting post dated 19/08/2021 at the cheque. The complainant has presented the said cheque through his bank SBI Bank Sidlaghatta on 19/08/2021. But the said cheque dishonored for the reason funds insufficient on dated 24/08/2021 and accordingly complainant endorsement from the bank. Thereafter the complainant got issued legal notice to the accused on 21/09/2021 and calling upon her to repay the said cheque amount. The said notice duly served on 23/09/2021. inspite of it the accused not replied nor repaid the amount. So the complainant has filed this complaint and prays to allow the same.

3. After taking cognizance, the accused appears through his counsel and obtained bail from the court. The plea of the accused has recorded but the accused has pleaded not guilty and claimed to be tried.

4. During the course of trial the complainant examined as PW-1 and got marked Ex.P1 to Ex.P5.

5. The statement of accused under section 313 of Cr.P.C., has recorded. She was denied all incriminating evidence against her. The accused examined herself as DW1 and got marked Ex.D1 to Ex.D13 documents.

6. Heard the Counsel for the complainant and accused.

7. The following points arise for my consideration :-

1. **Whether the complainant proves that the accused issued cheque bearing No.000009 dated 19/08/2021 drawn on her bank account maintained Kotak Bank, JP Nagar, Bangalore Branch, in favour of the complainant for a sum of Rs.3,50,000/- and the said cheque has dishonored on dated 24/08/2021?**
2. **Whether the complainant proves that, the legal notice dated 21/09/2021 issued to the accused and in spite of service of legal notice, the accused has not repay the cheque amount and thereby the accused committed an offence punishable under section 138 of Negotiable Instrument Act ?**
3. **What order ?**

8. After going through the records and hearing of the parties, the above points are as follows:-

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

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

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

REASONS

9. POINT NO.1 and 2 :- As these points are inter connected to each other, Hence, they have taken together for common discussion.

10. The complainant has examined himself as PW-1 and got marked Ex.P1 to Ex.P5. Ex.P1 is the cheque bearing No.000009 dated 19/08/2021, Ex.P2 is Endorsement, Ex.P3 is the legal notice, Ex.P4 is the postal receipt, Ex.P5 is the post acknowledgment.

11. It has specifically contended by the PW1 that, the complainant and accused are well known to each other since several years. In lieu of the above said relation, the accused approached to complainant on 15/07/2021 for financial assistance for the purpose of her legal necessities and turn over of accused's business. The accused approached the same at resident of complainant. The complainant has paid said amount for Rs.3,50,000/- to the accused on dated 19/07/2021. Thereafter the accused issued cheque bearing No.000009 drawn at Kotak Bank, JP Nagar, Bangalore Branch by putting post dated 19/08/2021 at the cheque. In order to said fact the PW1 got marked cheque at Ex.P1 and signature of the accused at Ex.P1(a). wherein shown that the accused has executed the said cheque in favour of complainant on dated 19/08/2021 for Rs.3,50,000/-. Further the complainant has presented the said cheque through his bank SBI Bank Sidlaghatta on 19/08/2021. But the said cheque dishonored for the reason **refer to drawer** on dated 24/08/2021 as per endorsement at Ex.P2. But the accused pleaded funds insufficient. Further took contention that the bank endorsement at Ex.P2 return for the reason that referred to drawer. As per Section 138 of NI Act

Section 138 in The Negotiable Instruments Act, 1881

138. Dishonour of cheque for 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 honour 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 provisions 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 six 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 or other liability" means a legally enforceable debt or other liability.]

12. In view of said provision of law wherein held that where any cheque drawn by a person an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharge, in whole or in part, of any debt or other liability, his returned by the bank as unpaid. So it has sufficient to constitute the alleged offence that the said cheque has unpaid from the bank account of accused person. So in the present case the cheque at Ex.P1 has return to the complainant with a shara that referred to drawer is amount that the said cheque has returned by the bank unpaid. Mere mentioning the word funds insufficient at the complaint has not discredit the veracity of the Ex.P1 and Ex.P2.

13. Thereafter the complainant got issued legal notice to the accused on 21/09/2021 at Ex.P3. The said notice served to accused as per postal receipt at Ex.P4 and postal acknowledgment at Ex.P5. It has submitted that even service of said notice, the accused has failed to repay the said amount nor reply the notice. During the cross examination of the PW1 deposed that **ನಿಪಿ 2 ರಲ್ಲಿ ರೆಫರ್ ಟು ಡ್ರಾಯರ್ ಎಂದು ಇದೆ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ ನಿಪಿ 1ರಲ್ಲಿ ಹಣ ಹೆಸರು ದಿನಾಂಕ ಬರವಣಿಗೆ**

ವ್ಯತ್ಯಾಸ ಇದೆ ಎಂದರೆ ಗೊತ್ತಿಲ್ಲ. Further deposed that ಕಾತ್ಯಾಯಿಣಿ ನನ್ನ ಮಗಳು. ಕಾತ್ಯಾಯಿನಿ ಮತ್ತು ಆರೋಪಿ ನಡುವೆ ಚೀಟಿ ವ್ಯವಹಾರ ಇತ್ತು ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಆರೋಪಿತಳು ಚೀಟಿ ವ್ಯವಹಾರದಲ್ಲಿ ಸದಸ್ಯಳಾಗಿ 3 ಚೆಕ್ಕು ಕೊಟ್ಟಿದ್ದಳು ಎಂದರೆ ಅವರ ವ್ಯವಹಾರಕ್ಕೂ ನಮಗೂ ಯಾವುದೇ ಸಂಬಂಧ ಇರುವುದಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ. here the accused has taken defense that there has chit transaction held between the accused and complainant's daughter.

14. Further the accused examined herself as DW1 and took contention that, the complainant and his wife and his daughter Kathyayini were having habit of borrowing hand loans from the accused. The complainant wife borrowed Rs.35,000/- from accused. Similarly the complainant also borrowed Rs.1,87,000/- from the accused and they have failed to repay the same with interest. Further the complainant's daughter Kathyayini has borrowed Rs.30,48,000/- from accused on 10/08/2021. The said daughter has runs a private chit, wherein the accused was one of the member of said chit. The accused has obtain amount from the said chit and for security purpose given some cheques belonging to Kotak Mahindra Bank. Out of the said cheques one Cheque has misused in the name of complainant and falsely claim Rs.3,50,000/-. But during the cross examination of accused person has deposed that ನನಗೆ ಪಿರ್ಯಾದುದಾರರು ಎಷ್ಟು ವರ್ಷದಿಂದ ಪರಿಚಯ ಎಂದರೆ ನನಗೆ ಅವರು ಪರಿಚಯ ಇಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. So the accused herself deposed

contrary to her chief examination. Further deposed in her cross examination that, ಆ ನೋಟೀಸಿಗೆ ನಾನು ಪ್ರತ್ಯುತ್ತರ ಕೊಟ್ಟಿದ್ದೇನ ಎಂದರೆ ಸರಿ. ಸದರಿ ಪ್ರತ್ಯುತ್ತರವನ್ನು ಈಗಾಗಲೇ ನಿಡಿ **13** ಎಂದು ಗುರುತಿಸಲಾಗಿದೆ. ಅದರಲ್ಲಿ ನಾನು ತಿಳಿಸಿರುವಂತೆ ***Through their daughter your client also approached my client borrowed certain amounts to overcome his financial constraints*** *ಎಂದು ತಿಳಿಸಿದ್ದೇನೆ* ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸದರಿ ಪ್ರತ್ಯುತ್ತರ ನೋಟೀಸಿನಲ್ಲಿ ನಾನು ತಿಳಿಸಿರುವಂತೆ ಪಿರ್ಯಾದಿ ನನ್ನ ಬಳಿ ರೂ **1,87,500** ಹಣವನ್ನು ಪಡೆದು ಅದಕ್ಕೆ ಶೇಕಡಾ **24** ಬಡ್ಡಿಯನ್ನು ಸಹ ಕೊಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದ ವಿಚಾರವನ್ನು ತಿಳಿಸಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ನಾನು ಚೀಟಿ ಹಣವನ್ನು ಕ್ಯಾತಾಯಿನಿ ರವರು ಹೇಳಿದ ಮೇರೆಗೆ ಅವರು ಹೇಳಿದ ಬ್ಯಾಂಕ್ ಖಾತೆಗಳಿಗೆ ಹಾಕಿದ್ದೆ ಹೊರತುನಾನು ಪಿರ್ಯಾದಿ ಅಥವಾ ಅವರ ಹೆಂಡತಿಯ ಬಳಿ ಹಣದ ವ್ಯವಹಾರ ಮಾಡಿಲ್ಲ. But as per chief examination of the accused has deposed herself that she has lend hand loan to the complainant and his wife and also to the daughter of the complainant as stated above. But she has denied the said admission during her cross examination which amounts that the DW1 have taken duel stands with regarding her defense. Further she deposed in her cross examination ನಾನು ಕಾತ್ಯಾಯಿಣಿ ರವರು ಹೇಳಿದ ಮೇರೆಗೆ ಪಿರ್ಯಾದಿ ರವರಿಗೆ ಮತ್ತು ಅವರ ಹೆಂಡತಿ ವಾಪಮ್ಮ ರವರಿಗೆ ವಿವಿಧ ಬಾರಿ ಬ್ಯಾಂಕ್ ಮೂಲಕ ಹಣವನ್ನು ಹಾಕಿದ್ದು, ಆ ಹಣದ ಒಟ್ಟು ಮೊತ್ತ **1,87,000** ಆಗಿತ್ತು. But the accused deposed in her chief examination as hereunder ***the complainant has also borrowed a sum of Rs.1,87,000/- from me the complainant through account with a promise to reimburse with interest at 24% per annum. But***

did not chose to do so. So the deposition made in chief examination and at cross examination of the accused have inconstistance to each other with regarding the above said fact of lending loan to the complainant from accused. So it has disclosed the fact that the accused has no specific defense with regarding the alleged case of the complainant. Further the accused has got marked Ex.D1 to Ex.D4 are certified copies of order sheet, plaint, written statement, deposition for OS.No.5131/2022. On perusal of the said documents, wherein the present accused filed suit against one Kathyayini Venugopal for recovery of amount Rs.78,06,720/- with interest. It has alleged in the said plaint averments that, **the plaintiff has running Sindhura Passion Boutque in Arikere Mico Layout the defendant Kathyayini came as as customer and femiler to the accused. Thereafter the said defendant has borrowed amount from 2016 to 2021 from accused and promise to repay the said amount with interest. But the said defendant has failed to do so.** Thereafter the accused has demanded her money from above said defendant, then she lodge false complaint before the Puttenahalli police. It has contended under the plaint averments at Ex.D2 at Para 5 that **the said police by cohersive method have also collected 10 blank cheques pertain to plaintiff (present accused) of Axis Bank, Arekere**

Branch, Bangalore handing over those cheques to Mr.Chirantan. But in the said suit the accused has not pleaded about the present cheque at Ex.P1. Furthermore in the present case the accused took defense that the complainant's daughter has obtained cheques of Kotak Mahindra Bank belongs to the accused for security purpose of chit transaction. So once again the accused has took different kind of version or defense in the present case and in the alleged OS.No.5131/2022 at Ex.D2. Wherein stated about Axis Bank. But in the present case stated above Kotak Bank.

15. Further the DW1 admitted during her cross examination that the said suit has dismissed on 08/01/2025. So the accused has failed to established her defense that she has lending loan amount to the complainant or his wife or his daughter. Further failed to prove the fact that the alleged cheque issued in faovur of complainant's daughter namely Kathyayini for security purpose of alleged chit transaction. Because the accused has never pleaded in the said Civil suit about the alleged chit transaction.

16. The accused got marked account statement at Ex.D5 to Ex.D8. Those documents produced in order to shown the alleged loan transaction with complainant or her wife or his daughter. But during the cross examination of the accused admitted that the Ex.D5 to Ex.D8 account statements are belongs to prior date

15/07/2021. So it disclosed the fact that the account statement have pertaining to the transactions before alleged transaction of this complainant case. Because the complainant alleged that on 15/07/2021 the accused approached to him and obtain loan for Rs.3,50,000/- and executed cheque at Ex.P1. So the Ex.D5 to Ex.D8 have not helpful to the contention raised by the accused. The learend counsel for accused filed written argument and submitted that the complainant and his wife and his daughter having habbit to borrowed loan from accused for interest and they have failed to repay the said loan amount. Further submit that the daughter of complainant namely Kyathayeni has runs chit transaction and during said chit transaction obtain some cheques from accused for security purpose. But in order to substantiate the said fact the accused has bnot produced any cogent material before the court.

17. So the accused has failed to prove through the Ex.D5 to Ex.D8 that there has loan obtain by complainant or her husband or her daughter from accused. Furthermore the accused has admitted that the said cheque belongs to her account and signature is also belongs to herself. There has no such material evidence from accused to ascertaining the alleged chit transaction held between complainant's daughter and accused. In the absence

of such material evidence it has not possible to considering the defense that the said alleged cheque issued for security purpose of chit transaction.

18. According to Section 139 of NI Act. ***It shall be presumed, unless the contrary is proved, that the holder of cheque receive the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.*** There has material evidence placed by the complainant that, the said cheque executed from accused in favour of complainant. The presumption under section 139 of said Act has in favour of the complainant that, the said cheque executed to discharge any debt or other liability. So the burden lies upon the accused to rebut the said presumption with cogent material.

19. According to Section 138(a) to (c) of the Negotiable Instrument Act. It has specifically mandates that, 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. The payee or the holder in due course of the cheque 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 30 days. 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. Then the cause of action arose and the accused person has amount to commit an offence punishable under section 138 of NI Act. In the present case the complainant has presented the said cheque at Ex.P1 within period of validity. Further obtain endorsement about dishonor of the cheque at Ex.P2 and got issued notice to the accused as per clause (b) of Section 138 of NI Act at Ex.P3. The accused has failed to fulfill the cheque amount even service of notice. Further the accused has not initiated any positive action against the complainant like filing a police complaint or filing the civil proceedings in respect of the alleged misuse of the cheque. In view of said presumption available under law that, unless the contrary is proved, it shall be presumed that the complainant has received the cheque for discharge in whole or in part of any debt or other liability. In order to the rebut the presumption available under law, the accused has not produce any cogent material to rebut the said presumption. The Section 138 of NI Act specifically speak that 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. So in the present case the oral and documentary evidence placed by the complainant demonstrated that the alleged cheque at Ex.P1 has drawn by the accused person on account maintained by her with bank and the said cheque executed for repayment of loan amount to the complainant out of her account maintained in the drawer bank. So the material evidence placed by the complainant along with other evidence, which has constitute the fact that, the accused person has committed an offence punishable under section 138 of NI Act. Other side accused has failed to rebut the presumption available in favour of the complainant. In view of the fact and circumstances available on record. I hold Point No.1 and 2 in **AFFIRMATIVE.**

20. POINT NO.3:- For the aforesaid reason and discussion, I proceed to pass the following:

: O R D E R :

Accused has convicted under section 255(2) of Cr.P.C., for the offence punishable under section 138 of Negotiable Instruments Act.

Accused has sentenced to pay fine of Rs.3,55,000/-. In default thereof

accused shall under go simple imprisonment for 6 months.

Acting under section 357(3) of Cr.P.C it has ordered that, Rs.3,50,000/- shall be paid to the complainant as compensation out of the said fine amount.

Supply 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 the open court on this the 9th day of April 2026).

MOHAMMED ROSHAN SHA
Digitally signed by MOHAMMED ROSHAN SHA
Date: 2026.04.17 12:58:06 +0530

(MOHAMMED ROSHAN SHA)
SR.Civil Judge & JMFC.,
Sidlaghatta

A N N E X U R E

The list of witnesses examined on behalf of complainant:-

PW1	:	Sri.Lakshmana.B.N

The list of documents exhibited on behalf of complainant:-

Ex.P1	:	Cheque
Ex.P2	:	Endorsement
Ex.P3	:	Legal notice
Ex.P4	:	Postal receipt
Ex.P5	:	Post acknowledgment.

The list of witnesses examined on behalf of Accused:-

DW1	:	Sri.Somya Deepak

The list of documents exhibited on behalf of the accused:

Ex.D1	:	Certified copy of order sheet for OS.No.5131/2022
Ex.D2	:	Certified copy of plaint for OS.No.5131/2022
Ex.D3	:	Certified copy of written statement for OS.No.5131/2022
Ex.D4	:	Certified copy of deposition for OS.No.5131/2022
Ex.D5 to 8	:	Account statements
Ex.D9	:	Notice
Ex.D10	:	Postal acknowledgment

Ex.D11	:	Postal receipt
Ex.D12	:	Certified copy of aadhar card
Ex.D13	:	Legal notice

SR. Civil Judge & JMFC.,
Sidlaghatta