KACD220008812024

Presented on : 15-04-2024
Registered on : 15-04-2024
Decided on : 02-04-2026
Duration : 17D-11M-01Y

IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C., AT: CHALLAKERE

Present: **Smt. HEMA H.R.**
B.A.L., L.L.B.,
Prl. Civil Judge and JMFC., Challakere.

Dated on the 02nd day of April 2026

C.C. No.353/2024

COMPLAINANT:

Smt. Saraswathi d/o Driver Obanna,
aged about 37 years, Agriculturist,
R/o Dasanayakanahatti village,
Nagaramgere post, Kasaba Hobli,
Challakere Taluk, Chitradurga District.

(By Sri K.Kumar, Advocate)

-V/s-

ACCUSED:

D.N.Srinivasa s/o late Nagaraju,
d/o Nagaveni, aged about 30 years,
Agriculturist, R/o near Jambikatte,
Dodderi village and post,
Challakere Taluk, Chitradurga District.

(By Sri T.Srinivasa, Advocate)

Date of registration of complaint	:	15.04.2024		
Offences alleged	:	U/Sec.138 of N.I. Act		
Date of commencement of recording of Evidence	:	28.03.2024		
Date of completion of recording of evidence		28.03.2024		
Date of pronouncement of Judgment	:	02.04.2026		
TOTAL DURATION	:	Days	Months	Years
		17	11	01

<u>: J U D G M E N T :</u>

The present complaint is filed under Section 200 of Cr.P.C. against the accused for the offence punishable under Section 138 of N.I. Act.

The brief facts of the plaintiff's case are as follows:

2. It is alleged in the complaint that the complainant and accused are known to each other for several years. On that acquaintance, accused approached the complainant for financial assistance and borrowed a sum of Rs.3,50,000/- from the complainant on 18.06.2023 for his domestic necessities. After that, when the complainant demanded for repayment of the loan, accused issued a cheque bearing No.144024 drawn on Karnataka Gramin Bank, Meerasabihalli Branch, for a sum of Rs.3,50,000/- towards discharge of the said debt. Accordingly, the complainant presented the said cheque for encashment through her banker i.e.

IDBI Bank, Challakere branch. Same was returned dishonoured for the reason “Funds insufficient” in the account of accused on 29.11.2023. Complainant contacted the accused and demanded for payment of the cheque amount. But, the accused has not paid the amount. Therefore, the complainant issued legal notice dated:20.12.2023 through her counsel by RPAD calling upon the accused to pay the amount as mentioned in the cheque within 15 days from the date of receipt of the said notice. Said notice was duly served to the accused on 22.12.2023. Inspite of service of notice, the accused neither paid the cheque amount nor replied to the notice. Hence, the complainant has filed this complaint to take legal action against the accused.

3. After receipt of the complaint, cognizance of the offence was taken and registered it in P.C.R. Thereafter, the sworn statement of complainant was recorded. After hearing the Advocate for complainant and on perusal of the documents submitted by the complainant, it was held that the complainant had made out prima facie case against the accused for the offence punishable under Section 138 of N.I. Act and it was ordered to register the case against the accused in register No.III and issued process against him.

4. In pursuance of the summons, the accused has appeared before this Court through his counsel and he was enlarged on bail by executing necessary bail bonds. The copy of complaint was furnished to the accused as required under Section 207 of Cr.P.C. As there are sufficient materials, the plea was recorded against the accused and explained it to accused in his vernacular

language, for which accused pleaded not guilty and claimed to be tried. Then the case was posted for recording of evidence of the complainant.

5. That, to substantiate the allegation made in the complaint, the complainant got examined herself as P.W.1 and she has produced documents which are marked as Ex.P.1 to 5. Then the statement of accused under Section 313 of Cr.P.C. came to be recorded, wherein the incriminating evidence appearing against the accused was read over and explained to the accused. He denied all incriminating evidence against him and submitted that he has defence to rebut the case of complainant.

6. Heard arguments of both counsels of complainant and accused. Perused the materials on record.

7. On the basis of the contentions raised in the complaint, the following points arise for consideration of this Court.

> 1. Whether the complainant proves that, the accused towards discharge of legally enforceable debt issued cheque bearing No.144024 dated:20.11.2023 drawn on Karnataka Gramin Bank, Meerasabihalli Branch, for a sum of Rs.3,50,000/- in favour of complainant and on presentation for encashment, it got dishonoured as “Funds insufficient” and inspite of service of notice, the accused failed to pay cheque amount within a statutory period and thereby the accused has committed the offence punishable under Section 138 of N.I. Act?
>
> 2. What Order or sentence.

8. This Court answers the above said points as follows:

Point No.1:- In the affirmative

Point No. 2:- As per final order

:REASONS:

9. Reasons for point No.1:- The complainant has approached this Court by alleging that the accused has committed an offence punishable under Section 138 of N.I. Act. The burden is casted on the complainant to prove that she has complied with the mandatory requirements of Section 138 of N.I. Act and also she has to prove the existence of legally enforceable debt under disputed cheque. In order to prove its case, the complainant got examined herself as P.W.1 and got marked Ex.P.1 to 5. The chief examination of P.W.1 is nothing but the reiteration of averments made in the complaint. Ex.P.1 is the cheque dated:20.11.2023 issued by accused. Ex.P.1(a) is signature of accused. Ex.P.2 is endorsement issued by the bank regarding dishonour of cheque i.e. Ex.P.1. Ex.P.3 is legal notice issued to accused. Ex.P.4 is postal receipt regarding sending of Ex.P.3. Ex.P.5 is postal acknowledgment regarding service of notice i.e. Ex.P.3.

10. In order to constitute an offence under Section 138 of N.I. Act, the complainant has to fulfill the following requirements which are as follows:

> (i) cheque should have been issued for discharge in whole or part of any debt or other liability.
>
> (ii) Cheque should have been presented before the bank within a period of its validity.
>
> (iii) The payee should have issued a legal notice in writing to the drawer of the

cheque within 30 days from the date of information by the bank about dishonour of cheque.

(iv) After receipt of the notice, the drawer should have failed to pay the cheque amount within 15 days from the date of receipt of said notice.

(v) On non payment of the amount due on the dishonoured cheque within 15 days from the date of receipt of the notice by the drawer, the complaint should have been filed by the complainant within one month from the date of expiry of grace time of 15 days before metropolitan Magistrate or not below the rank of JMFC.

11. If the aforesaid ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In order to prove the case of complainant, P.W.1 has to satisfy the ingredients of Section 138 of N.I. Act. In present case, the cheque Ex.P.1 bearing No.144024 dated:20.11.2023 drawn on Karnataka Gramin Bank, Meerasabihalli branch, for a sum of Rs.3,50,000/- has been presented for encashment within its validity period and it was dishonoured. The bank has issued an endorsement for “funds insufficient” on 29.11.2023. The complainant got issued legal notice to the accused on 20.12.2023 through RPAD. The said notice was served to the accused on 22.12.2023. The accused has to comply the demand notice within 15 days from 23.12.2023 and after the expiry of 15th day, the cause of action accrues to the complainant for presenting the complaint. In this case, 15th day expires on 06.01.2024 and the cause of action commences from 07.01.2024 and the complaint has to be presented within one month from that date. The

complaint was presented on 25.01.2024 which is within the period of limitation. Hence, complainant has complied with the mandatory provisions of Section 138 of N.I. Act in respect of Ex.P.1-cheque.

12. At this stage, it is pertinent here to note that Section 139 and 118 of N.I. Act, which reads as follows:

> Section 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 Section 138 for the discharge in whole or in part, or any debt, other liability.
>
> Section 118: Presumption as to negotiable instruments - Until the contrary is proved the following presumption shall be made -
>
> (a) of consideration:- Every negotiable instrument was made or drawn for consideration and that, every such instrument, when it has been accepted, endosed, negotiated or transferred was accepted, endorsed, negotiated or transfered for consideration.

13. As per aforesaid provisions, Section 118 of the Act inter alia directs that it shall be presumed until the contrary is proved that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed that cheque is issued for discharge of whole or part of any debt or liability.

14. The Court relies upon the decision of Hon'ble Apex Court in the case of Rangappa Vs. Mohan reported in 2010(11) SCC 441 wherein it is held as follows:

> " Once a cheque relates to the account of the accused and he accepts the same and also admits his signature on the cheque, then the initial presumption under Section 139 of N.I.

> Act as well as under Section 118 of N.I. Act has to be raised in favour of the complainant. It is a mandatory presumption. But, the accused is entitled to rebut the presumption on preponderance of probabilities."

15. In the present case as stated above, the complainant has complied the legal requirements of the law. The Ex.P.1 to P.5 support the contention of the complainant that accused has issued the cheque in question for repayment of loan and the same was dishonoured and even after issuance of notice, accused has not paid the amount. Hence, this Court holds that the presumption contemplated under section 139 of N.I. Act works in favour of the complainant.

16. In this case, the accused has appeared through his counsel and claimed that he has defence to make. However, the accused has not taken any defence against the complaint and has not cross examined the complainant in respect of Ex.P.1-cheque. If the accused has not issued the alleged cheque for consideration, he would have adduced evidence on his behalf and challenged the case of complainant. But, not doing so makes this Court to draw adverse inference against the accused. The accused has denied the allegations of complainant in his statement recorded under Sec.313 of Cr.P.C. But, mere denial of allegation of the complainant will not reduce the burden on him to rebut the presumption which was provided to complainant under N.I. Act.

17. This court relies upon decision regarding who has to prove the elements of consideration for issuing of cheque i.e., ***AIR***

2001 SC 2895 between KN Bhima V/s Muniappa and another, wherein the Hon'ble Apex court held that, the burden to prove the consideration for the cheque which lies on the accused if not rebutted, the presumption is that the cheque was issued for the consideration. It is for the accused to prove that, the cheque was not issued towards a debt or liability. He has to lead credible evidence for rebuttable of this presumption. Mere denial of averments is not suffice to shift this burden on the complainant. In this case, accused has not placed any material evidence to rebut the presumption raised in favour of the complainant.

18. In the light of the discussion herein above, this court is of the considered opinion that, the complainant proved that the accused has committed an offence punishable U/s 138 of NI Act. It is well settled that, a holder of cheque is entitled to the benefit of legal presumption under Section 118[a] of N.I.Act, that she came into possession of the instrument in due course unless it is shown to have come to the custody of the possessor by means of an offence, fraud or other unlawful means.

19. In the case on hand, the evidence of PW.1 clearly establishes the issuance of cheque towards discharge of legally enforceable debt. Mere denial of allegations by the accused not supported by the concrete material would not come to the assistance of the accused to disbelieve the testimony of PW.1.

20. In the present case, the accused has not cross examined the complainant and has not adduced evidence on his

behalf and also not canvassed arguments. At this stage, Court relies upon the following decision:

> In case of **Sunil Yadav Vs. Y.C.Manju in Crl.Revision Petition No.664/2020 dated:07.02.2025,** the Hon'ble High Court of Karnataka noted that considering the factual aspect of the case as well as the proceedings under Section 138 of N.I. Act, it is settled law that same has to be concluded expeditiously in light of guidelines issued by the Court from time to time for speedy disposal of the cases, the scope of Section 142, 143 and 145 of N.I. Act, it was not necessary for the trial Court to wait for accused to make his appearance. The Court is empowered to proceed with the case without recording the statement of the accused under Section 313 of Cr.P.C. The mere use of word "may" cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, if the accused has not bothered to remain present before the Court and also Court has to take note of that fact that the complainant is running from pillar to pillar after filing of the case and when the material discloses that the accused did not bother, Court has to exercise discretion and proceed with the case by dispensing the statement under section 313 of the Code. Further, it is also observed that, each and every stage, the Court cannot issue NBW and secure him. And once he claims the trial without pleading guilty and he shall cooperate and take the opportunity to cross examine the witness and inspite of several opportunity was given for cross examination, and lead his defence evidence, but he did not do so. He did not avail the benefit."

21. As per the above decision, if the accused does not bother to appear and take any defence against the case of

complainant, it is not necessary for the Court to wait for accused to make his appearance. The Court is empowered to exercise discretion and to proceed with the case. In the present case, the accused has not adduced evidence on his behalf and has not cross examined the complainant inspite of several opportunities given to her.

22. For all these reasons, this court is of the considered opinion that, the complainant has proved that, the accused has issued the Ex.P1 cheque for discharging the legally recoverable debt to the complainant. From the documents produced by the complainant at Ex.P1 to 5 as well as from the complaint, it is very much clear that the complainant has filed this complaint after complying the mandatory requirements as envisaged under Section 138 of N.I.Act. As discussed above, once it is proved that the accused has issued the cheque in respect of legally recoverable debt, it is the bounden duty of the accused to repay the amount as demanded by the complainant in her notice. In this case, the accused has not paid the cheque amount inspite of valid demands made by the complainant. Thereby the accused has committed the offence punishable under Section 138 of N.I.Act.

23. The insertion of Penal Provision under Section 138 of Act, is to maintain a healthy business transaction among the people based on faith, belief and understanding that is why the drawer of a cheque should not be allowed to abuse the accommodation given to him by a creditor. In the case on hand, the accused has not placed any material evidence to rebut the

presumption available U/s 138 of NI Act. As per section 143(3) of the NI Act every trial under this section shall be conducted as expeditiously as possible and be concluded within 6 months from the date of filing of the complaint. In this case, the complaint is filed in the year 2024 and on perusal of order sheet, it shows that, the accused has not appeared regularly before the Court and has not co-operated with the court for speedy disposal. Considering all those facts, it would be justifiable to award a fair and reasonable fine amount payable to the complainant that would meet the ends of justice. With these observations this Court answered **Point No.1 in the *Affirmative*.**

24**. Reasons for Point No.2:-** In view of findings on point No.1, this Court proceeds to pass the following:

:ORDER:

Exercising power under Section 255(2) of Cr.P.C. the accused is convicted for the offence punishable under Section 138 of N.I. Act.

Accused is sentenced to pay fine of Rs.3,75,000/- (Rupees three lakh seventy five thousand only). In default of payment of fine, he shall undergo simple imprisonment for six months.

Further acting U/s 357(1)(a) of Cr.P.C. out of the fine amount of **Rs.3,70,000/-**, a sum of **Rs.5,000/-** shall be defrayed as prosecution expenses to the state.

Further, acting under section 357(1)(b) of code of criminal procedure, the remaining fine amount of **Rs.3,70,000/-** is hereby ordered to pay as compensation by the accused to the complainant.

In the event of accused failed to pay the compensation amount to the complainant, complainant is at liberty to recover the same in usual manner in accordance with law.

Office is directed to furnish free copy of this judgment to the accused in compliance under section 363(1) of Cr.P.C 1973.

(Dictated to the stenographer directly on computer, typed by him and corrected by me, then pronounced in the open Court on this the 02nd day of April, 2026)

(Hema .H.R.)
Prl. Civil Judge & JMFC.,
Challakere.

ANNEXURE

I. **Witnesses examined for the complainant.**

PW.1 : Saraswathi

II. **Documents exhibited for the complainant.**

Ex.P1 : Cheque

Ex.P2 : Bank endorsement

Ex.P3 : Legal notice

Ex.P4 : Postal receipt

Ex.P5 : Postal acknowledgment

III. **Witnesses examined for the complainant.**

--Nil--

III. **Documents exhibited for the accused.**

--Nil--

Prl. Civil Judge & JMFC.,
Challakere.