IN THE COURT OF THE ADDL. DISTRICT AND SESSIONS JUDGE-FTSC-I, AT CHIKKAMAGALURU

:PRESENT:

Sri. Guruprasad R. Kulkarni, B.A., LL.B (Hons)
Addl. District and Sessions Judge FTSC-1
Chikkamagaluru

Crl.A.No.01/2025

Dated this 1st day of July 2026

APPELLANT: Sri. Dhruvakumar B.
S/o late Balacharu,
R/o Thoranamavu Village,
Kuduvalli Post, Chikkamagaluru
Taluk & District.

(Rep/by Sri. S.B. Satheesha, Adv.)

V/S

RESPONDENT: Sri. Sundresh T.R. S/o late H.B. Ramegowda, R/o Thoranamavu Village, Kuduvalli Post, Chikkamagaluru Taluk & District.

(Rep/by Sri. M.D. Punith, Adv.)

JUDGMENT

The judgment of conviction and sentence in C.C. No.314/2021 dated 10.12.2024 on the file of II Addl. Civil Judge and JMFC., Chikkamagaluru is assailed in this appeal.

2. Secured the trial Court records.

3. The ranks of the parties shall be referred to as appearing before the trial Court.

4. It is asserted that cheque issued by the accused bearing No.336801 dated 09.11.2020 for a sum of Rs.5,00,000/- drawn on Canara Bank, Aldur Branch, Chikkamagaluru, in favour of the complainant towards discharge of his debt/liability for having availed a loan of Rs.5,00,000/- from him was dishonored due to insufficiency of funds. The demand notice issued to the accused is duly served upon him, despite which the debt is unpaid.

5. The trial Court after taking cognizance, has issued notice to the accused, pursuant to which he has entered

appearance and availed bail. The accused has pleaded not guilty and claimed to be tried.

6. The complainant has examined himself as PW-1 and got marked Ex.P-1 to Ex.P-12. The accused has denied the incriminating circumstances against him as false and has examined himself as DW-1 and one supporting witness as DW-2. After hearing the matter on merits, the trial Court has convicted the accused and sentenced him for having committed the offence punishable under Section 138 of N.I. Act.

7. The accused has preferred this appeal aggrieved by the said impugned judgment. He denies the transaction and the existence of legally enforceable debt. The financial capacity of the complainant for having advanced the loan to him is disputed. He contends that the complainant has misused the cheque issued towards security of chit fund business.

8. Conversely, the complainant contends that the essential requisites of Section 138 of N.I. Act is fulfilled. The accused is unable to probablise his defence so as to rebut the presumption under Section 139 of N.I. Act. The contentions urged in appeal lacks merits. The trial Court has properly appreciated the evidence on record and has arrived at a just conclusion in convicting the accused. The impugned judgment does not suffer from any infirmities calling for any interference in appeal.

9. Heard arguments on both sides.

10. The following points arises for my determination:-

1. Whether the complainant fulfills the essential requisites of Section 138 of N.I. Act?
2. Whether the accused is able to probablise his defence by rebutting the presumption under Section 139 of N.I. Act?
3. What order?

11. My findings to the above points is as follows :

Point No.1 : In the Affirmative

Point No.2 : In the Negative

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

REASONS

12. **Point Nos.1 & 2:-** As the facts are overlapping, these points are taken up for common discussion.

13. The evidence of PW-1 postulates that he has lent a hand loan of Rs.5,00,000/- to the accused and towards discharge of this debt/liability, the accused has issued the cheque/Ex.P-1 dated 09.11.2020 for a sum of Rs.5,00,000/- which was dishonored upon its presentation on the same day for 'funds insufficient' and 'account closed' which is evident from the bank memo at Ex.P-2. Thereafter the complainant got issued demand notice/Ex.P-3 dated 12.11.2020 which was duly served upon the accused on 25.11.2020 as evident from the postal acknowledgment at Ex.P-5.

14. The accused/DW-1 has led his evidence denying the liability. He testifies that his signed blank cheque issued towards security of chit fund business in the year 2017 is not

returned after closure of the chit fund business and is misused by the complainant. DW-2 who is allegedly the member of chit fund business has supported the defence of the accused.

15. The legal provisions governing the presumptions under the Negotiable Instruments Act particularly Section 118 of the Act embodies that it shall be presumed, until the contrary is proved, that every negotiable instrument was drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability. Section 139 of the N.I.Act imposes reverse onus on the accused of proving the non-existence of the presumed fact that cheque was not issued in discharge of a debt/liability.

16. It is well settled that as per Section 139 it is obligatory on the Court to raise the presumption that the cheque is

issued towards discharge of liability/debt in every case where the factual basis for the raising of the presumption is established. However it does not preclude the accused against whom the presumption is drawn from rebutting it and proving the contrary.

17. It is the initial burden on the complainant to establish that the cheque was issued by the accused towards discharge of his debt/liability. Once the complainant is able to establish the said fact, the presumption under Section 139 of the N.I. Act shifts the evidential burden on the accused in proving that the cheque was not issued by him towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumption that he has issued the cheque in discharge of his debt/liability would operate against him.

18. In Basalingappa V/s Mudibasappa (2019) 5 SCC 418 it is held that in order to rebut the presumption and to prove

the contrary, it is open for the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The accused has the option to establish that the non-existence of debt/liability is so probable that a prudent man ought under the circumstances of the case, to act upon the supposition that debt/liability did not exist.

19. In Bir Singh V/s Mukesh Kumar (2019) 4 SCC 197 the Hon'ble Supreme Court has held that mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque is sufficient to draw the presumption.

20. Thus, the accused has two options, first in proving that the debt/liability does not exist by leading defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a

preponderance of probabilities by referring to the particular circumstance of the case.

21. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by the opposite party. It may comprise circumstantial evidence or presumption of law or fact. Thus, it can be derived that once the accused tenders evidence to the satisfaction of the Court that there exists no debt/liability, the burden shifts on the complainant to prove the existence of a debt/ liability. The presumption under Section 139 of N.I. Act does not come to the aid of the complainant if he fails to prove the said fact.

22. In the instant case, DW-1 has specifically contended that no such transaction ever took place as alleged by the complainant and that the complainant has misutilized the cheque/Ex.P-1 issued by him towards security of chit fund business in the year 2017. This contention is also supported

by DW-2. However, there is no evidence led by DW-1 or DW-2 in order substantiate that the complainant was running a chit fund business in the year 2017. It is also evident that the accused has not taken any legal action against the complainant for the alleged misuse of his cheque.

23. Pertinently, the accused does not dispute his signature appearing over the cheque/Ex.P-1, though he disputes the contents of it. In this context it is useful to refer to Section 20 of N.I. Act which deals with inchoate instruments contemplating that where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments and either wholly blank or having written thereon an incomplete negotiable instrument, he gives prima-facie authority to the holder of the instrument to make or complete the negotiable instrument, for any amount specified therein and not exceeding the amount covered by

the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount, provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

24. Therefore, the mandate of Section 20 of N.I. Act is clear that once the execution of cheque is admitted, it shall be taken that the cheque was issued by the accused in favour of the complainant towards the discharge of his liability and the presumption under Section 139 of N.I. Act needs to be drawn against the accused as having issued the cheque/Ex.P-1 towards discharge of his liability.

25. On re-assessing the entire evidence on record does substantiate the claim of the complainant that there was a financial transaction entered into by complainant with the accused wherein he has lent a hand loan of Rs.5,00,000/- to

the accused and that the accused has issued the disputed cheque/Ex.P-1 towards discharge of legally enforceable debt in favour of the complainant. The rebuttal evidence led by DW-1 & DW-2 contending that the said cheque was issued towards security of chit fund business stands unprobablised in terms of Section 20 of N.I. Act.

26. The evidence led by the complainant in the form of bank statement at Ex.P-6, the land records at Ex.P-7 to Ex.P-10 and his salary pay slip at Ex.P-11 does depict he has sufficient source of income. The accused has not led any evidence to contradict the financial capacity of the complainant for having lent the loan to him or is able to discredit the evidence led by the complainant as regards to his financial capacity.

27. On re-appreciation of the entire evidence on record, it is discernible that the complainant is able to substantiate his claim by leading cogent evidence fulfilling the essential

requisites of Section 138 of N.I. Act that the accused has issued the cheque/Ex.P-1 towards discharge of legally enforceable debt which was dishonored on account insufficiency of funds and account closed and also despite due service of demand notice the accused has neither replied to the notice nor cleared the debt/liability.

28. The rebuttal evidence led by DW-1 & DW-2 does not discharge the evidential burden in discrediting the evidence led by complainant/PW-1. The accused has neither been able to demonstrate any credible circumstance in order to rebut the presumption under Section 139 of N.I. Act by probablising his defence.

29. The findings given by the trial Court based on the evidence before it in convicting and sentencing the accused does not call for any interference in appeal. None of the contentions urged by the accused in this appeal are sustainable. Accordingly, I answer point No.1 in the

Affirmative and point No.2 in the Negative.

30. **Point No.3**:- For the reasons indicated above, I proceed to pass the following:

ORDER

Appeal is hereby **DISMISSED** with cost of Rs.2,000/-.

The Judgment of conviction and sentence in C.C. No.314/2021 dated 10.12.2024 on the file of II Addl. Civil Judge and JMFC., Chikkamagaluru is hereby **AFFIRMED**.

Records be consigned.

G R KULKARNI
Digitally signed by G R KULKARNI
Date: 2026.07.01 18:21:06 +0530

Addl. Dist. & Sessions Judge-FTSC-1
Chikkamagaluru