



**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE &
J.M.F.C., AT: CHIKKAMAGALURU**

**Present : Smt. Kumari Sujatha. B.Com. LL.B.
Prl. Senior Civil Judge & CJM,
Chikkamagaluru.**

Dated: This the 17th day of March 2026

C.C. No. 16/2021

Complainant : Narayana Gowda S.S,
S/o Late S.B.Subbe Gowda,
Aged about 68 years,
Agriculturist,
R/o Sargod Village,
Kundur Post,
Chikkamagaluru Taluk.

(By Sri KCS., Advocate)

-V/s-

Accused : Yogesha,
S/o Some Gowda,
Aged about 35 years,
R/o Nidagodu Village,
Mallandur Post,
Chikkamagaluru Taluk.

(By Sri MGJ., Advocate)

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J U D G M E N T

This complaint is filed by the complainant against the accused under Section 200 of Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act.

2. Brief facts averred in the complaint is as under:

The accused has borrowed a sum of Rs.24,000/- from the complainant as a hand loan in the month of November-2018 for his urgent necessity and for the repayment of the said amount the accused has issued a post dated Cheque bearing No.2849874 dtd: 04.01.2019 for Rs.24,000/- drawn on The Chikkamagaluru District Co-operative Central Bank Ltd., Chikkamagaluru in favour of the Complainant. The Complainant has presented the same for realization through his banker Corporation Bank, Mudigere. But, the said Cheque was dishonored and returned with an endorsement dtd: 18.01.2019 as “Insufficient Funds”. Then, the



Complainant has got issued legal notice to the accused on 23.01.2019 and the same was served on the accused on 24.01.2019. Despite of it, the accused has neither made the payment nor replied to the said notice and thereby the accused has committed an offence punishable under Section 138 of Negotiable Instrument Act. Therefore, the Complainant has approached this Court by filing the present complaint. Hence, this complaint.

3. At the initial stage, this complaint was filed by the Complainant before II Addl. Civil Judge & J.M.F.C., Chikkamagaluru and after recording the Sworn statement, the said Court had registered the case against the accused in C.C. Register No.III and summons was issued to the accused. Thereafter, the accused had appeared before the said Court and got released on bail on 1.07.2019. The plea of the accused was recorded and accused has pleaded not guilty and claimed to be tried. Thereafter, the Sworn statement of



the Complainant itself treated as the evidence of PW.1. Thereafter, as per the Order (Criminal) dtd: 07.10.2020 passed by the Prl. Senior Civil Judge & CJM, Chikkamagaluru, this case was transferred from the II Addl. Civil Judge & J.M.F.C., Chikkamagaluru to the Prl. Senior Civil Judge & CJM, Chikkamagaluru.

4. In order to substantiate the case of the Complainant, the Sworn statement of the Complainant himself treated as the evidence and he was treated as PW.1 and got marked Ex.P.1 to P.4 and closed his side evidence.

5. Thereafter, the accused was examined under Section 313 of Cr.P.C., and the accused has denied the incriminating evidence led against him and he choose to lead defence evidence. But, despite sufficient opportunities given to him, neither he appeared before the Court nor he led his evidence.



6. Having heard the arguments and upon going through the deposition and documents exhibited and the materials available on record, the following points arise for the determination of this Court.

POINTS

- 1. Whether the complainant proves beyond all reasonable doubt that the accused had issued Ex.P-1 towards the legally enforceable debt to him?***
- 2. Whether the complainant further proves that Ex.P.1 cheque has been dishonoured for the reasons “Funds Insufficient”?***
- 3. Whether the complainant further proves that he has complied the mandatory provisions as envisaged Under section 138 of Negotiable Instrument Act?***



4. *Whether the complainant further proves that the accused is liable for the offence punishable under section 138 of Negotiable Instrument Act?*

5. *What order?*

7. My findings on the above points are as follows:-

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3: In the Negative

Point No.4 : In the Negative

**Point No.5 : As per final order for the
Following**

REASONS

8. **Point No.1 :-** To make out an offence punishable under section 138 of NI Act, the complainant has to prove the following:-



1. That the accused person had a legally enforceable debt or liability to the Complainant;
2. That the accused person had issued cheque in discharge of said liability;
3. That the cheque was dishonored for insufficient fund;
4. That the accused has received the demand notice issued by the complainant regarding dishonor of cheque.

9. Now, the first and foremost thing necessary to be looked into the existence of a legally enforceable debt or liability to the complainant by the accused and hence, lets look into the evidence of the complainant in this regard.

10. In order to prove the complainant's case, the complainant got examined himself as PW.1 and got marked 4 documents at Ex.P-1 to Ex.P-4. Ex.P-1 is the Cheque issued by the accused, Ex.P- 2 is the Return Memo, Ex.P-3



is the Office copy of the legal notice issued through advocate and Ex.P-4 is the Postal acknowledgment.

11. PW.1 has deposed in his chief examination that the accused approached him for financial assistance for some urgent need and the accused borrowed Rs.24,000/- from him as a hand loan in the month of November-2018 and the accused issued Post dated Cheque bearing No.284987 dtd: 04.01.2019 drawn on The Chikkamagaluru District Co-operative Central Bank Ltd., Chikkamagaluru, but, when he presented the same for encashment, said Cheque was returned with an endorsement as **“Funds Insufficient”**. Thereafter, he got issued a legal notice dated : 23.01.2019 by a registered post calling upon the accused to make payment of the amounts covered under the said Cheque within 15 days from the date of receipt of the said notice. The said notice came to be served upon the accused on 24.01.2019. But the accused has failed to comply with the said notice and



thereby, the accused has committed an offence punishable under Sec. 138 of N. I. Act.

Existence of legally recoverable debt is a “*sine qua non*” for prosecuting the case under Sec. 138 of N.I. Act.

12. The Negotiable Instrument Act raises two presumptions :- one contained in Sec. 118 and the other in Sec. 139.

Section 118 in The Negotiable Instruments Act, 1881

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;



(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.



13. Further Sec. 139 of the NI Act reads as under :

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 in section 138 for the discharge, in whole or in part, of any debt or other liability.”

14. Before drawing the presumption under Sec. 139 of NI Act, it is the duty of the Court to see whether or not the complainant has discharged his initial burden as to acceptance of legally enforceable debt. No doubt as per Sec. 118(a) of the Act, there is a rebuttal presumption that every Negotiable Instrument as accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration.

15. When, we come to the present case on hand, Ex.P.1 -Cheque is belonging to the accused and Ex.P1(a) is



the signature of the accused. Further Ex.P-2 clearly shows that the said Cheque Ex.P-1 issued by the accused in favour of the complainant was returned with endorsement “Funds insufficient”. It also shows that the accused is due to Rs.24,000/- to the complainant and accordingly, the complainant has proved that there is a legally recoverable debt from the accused towards him.

16. The presumption under section 139 of the Act is a presumption of law, it is not a presumption of fact. This presumption has to be raised by the court in all the cases once the factum of dishonour is established. The onus of proof to rebut this presumption lies on the accused. The standard of such rebuttal evidence depends on the facts and circumstances of each case. Such evidence must be sufficient, cogent and should prove beyond any reasonable doubt.

17. At this juncture, I would like to go through another decision reported in (2002) 6 Section 426 in between



ICDS Ltd V/s Beena Shabeer and another- wherein Hon'ble Apex Court has observed in Para 10 that :-

“ The language, however, has been rather specific as regards the intent of the legislature. The commencement of the section stands with the words “ Where any cheque”. The above noted three words are of extremment significance, in particular, by reason of the user of the words “ Any” the first three words suggest that infact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for discharge of any debt or other liability, the high lightened words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the



banker unpaid. The legislature has been very careful enough to record not only discharge in whole or in part of any debt, but, the same includes other liability as well”.

18. In the instant case also, the complainant holds the Cheque belongs to the accused. However, the Complainant / PW.1 has adduced his oral evidence along with documentary evidence which supports the contention taken by him regarding the amount due to him by the accused. It is pertinent to note here that though the accused appeared before the Court through his counsel, he did not cross-examine the PW.1 to rebut the evidence. Further, he did not step into the witness box to disprove the contention of PW.1. Hence, in my considered opinion the accused failed to discharge his onus to disprove the evidence adduced by the complainant as required in law and as discussed in the rulings cited above and the complainant could successfully



prove the fact that the Cheque in question was issued by the accused is in discharge of his legally enforceable liability and the defence failed to rebut the presumption created in favour of the complainant. Accordingly, I answer Point No.1 is in the “**Affirmative**”.

19. **Point No.2** :- In order to prove that the Cheque Ex.P-1 has been returned for the reasons “Funds insufficient”, the PW.1 has produced Ex.P.2 i.e., Bank Memo. The contents clearly shows that the Cheque bearing No. 284987 for Rs. 24,000/- was returned due to “Funds insufficient”. Hence, I am of the considered opinion that, the complainant has proved Point No.2. Accordingly, I answer Point No.2 is in the “**Affirmative**”.

20. **Point No.3:** Section 138 of N.I.Act presupposes the situation where a person issues a Cheque to have an account with the bank. The Cheque is issued towards the payment of a “debt” or “liability” and it is



returned unpaid for want of funds, the person issuing such Cheque shall be deemed to have committed an offence. Three conditions are necessary to launch Criminal Prosecution Under section 138 of N.I. Act against the drawer of the bounced Cheque. They are :-

- a) Cheque shall be presented for payment within 3 months from the date of issue or before expiry of its validity.
- b) The holder shall issue notice demanding payment in writing to the drawer within one month of the receipt of information of the bounced Cheque and
- c) The drawer in spite of the demand notice fails to make payment within 15 days of the receipt of the notice.

21. PW.1 clearly reiterated in his evidence that the accused has issued Cheque bearing No. 284987 for Rs. 24,000/- dated 04.01.2019 drawn on The Chikkamagaluru



District Co-operative Central Bank Ltd., in his favour and he has presented the said Cheque Ex.P-1 for encashment and the same was returned with an endorsement “Funds insufficient” on 18-01-2019 and he has issued legal notice to the accused on 23.01.2019 i.e., within 30 days from the date of Cheque bounce. Hence, the complainant has complied the said provisions.

22. At this juncture, it is important to note here that the said legal notice i.e., Ex.P-3 was duly served on the accused on 24.01.2019. The present Complaint has been filed before the Court on 06.02.2019. It is very important to note here that Ex.P.3 is the notice wherein the Complainant has called upon the accused to repay the due amount of Rs.24,000/- with interest within 15 days from the date of receipt of the said notice. It is also worth to note here that the said notice i.e., Ex.P.3 was served on the accused on 24.01.2019. Then, the 15 days would be completed on



08.02.2019. Thereafter, the Complainant has to file the complaint within 30 days before this Court. But, the Complainant has filed the present complaint before this Court on 06.02.2019 i.e., prior to 15 days from the date of service of notice. Hence, the present complaint is a premature complaint which is not maintained under law as the cause of action only arises on the 16th day. The offence is only considered committed if the drawer fails to pay the amount within 15 days of receiving the demand notice. Hence, the Complainant has failed to comply mandatory provisions as envisaged under Section 138 of N.I.Act. Accordingly, I answer Point No.3 in the “**Negative**”.

23. **Point No.4:** As already discussed above, the complainant has proved that Ex.P.1- Cheque has been issued by the accused towards the legally enforceable debt and also when the complainant has presented the same for encashment, the same was returned with an endorsement



“Funds insufficient” and though the complainant has issued legal notice to the accused, he did not repay the Cheque amount. But, the Complainant has filed this Complaint before the Court within 15 days from the date of service of notice to the accused. Hence, the Complainant has failed to comply the mandatory provisions envisaged under Section 138 N.I.Act. Hence, the complaint is liable to be dismissed. Accordingly, I answer Point No.4 is in the “**Negative**”.

24. **Point No.5:** In view of my findings on Point No.1 to 4 as stated supra, I proceed to pass the following:

ORDER

Acting under Section 255(1) of Cr.P.C., the accused is hereby acquitted for the offence punishable under Section 138 of Negotiable Instrument Act.



His bail bond and surety bond
stands cancelled.

(Dictated to the stenographer, transcribed and typed by her,
corrected, signed and pronounced by me in the open Court on this the
17th day of March 2026).

Sd/-
(Smt. Kumari Sujatha)
Prl. Senior Civil Judge & JMFC,
Chikkamagaluru.

ANNEXURE

1. Witnesses examined for the complainant:

P.W.1 : Narayana Gowda S.S.

2. Documents marked for the complainant:

Ex.P.1 Original Cheque
Ex.P1(a) : Signature of the Accused
Ex.P.2 : Returninng Memo
Ex.P.3 : Copy of Legal Notice
Ex.P.4 : Postal Acknowledgment

3. Witnesses examined for the Accused

-NIL-



4. Documents marked for the Accused

- NIL -

Sd/-

(Smt. Kumari Sujatha)
Prl. Senior Civil Judge & JMFC,
Chikkamagaluru.
