KACM300008662021

Presented on	: 23-09-2021
Registered on	: 23-09-2021
Decided on	: --
Duration	:

IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C., AT KOPPA

:PRESENT:

Smt. Nandini.M.N, B.A.,LLB.,
Civil Judge and JMFC.,
Koppa.

Dated this the 27th day of June 2026

CC.NO.641/2021

COMPLAINANT	:	Sukumara S/o Annu Poojari, Aged about 52 years, R/o Petegadde, Adibebailu, Village, Hiregadde Post, Koppa Taluk, Chikkamagaluru District. ***(By Sri. M. H. Sudhir Kumar Murolli, Advocate)***

-Vs-

ACCUSED	:	Sri. Vishwanatha Achari S/o Lakshmana Achari, Aged about 45 years, R/o Adibebailu-1, Adibebailu Village, Hiregadde Post, Koppa Taluk-577117. And also at: Vishwanatha C/o Shivaprasad S.B., Balekola Estate Branch Office, Near Okkaligara Samudaya Bhavan, Chikkamagaluru. ***(By Smt. Suchetha B., Advocate)***

1	**Date of commencement of offence/date of cheque**	**: :**	**02.02.2021**
2	**Date of report of offence**	**:**	**18.05.2021**

3	**Date of arrest of the accused**	**:**	**---**
4	**Name of the complainant**	**:**	**Sri Sukumara**
5	**Date of Commencement of evidence**	**:**	**07.09.2021**
6	**Offence complained of**	**:**	**U/Sec. 138 of N.I. Act**
7	**Opinion of Judge**	**:**	**Accused convicted**
8	**Complainant represented by**	**:**	**Sri. M.H.S.K. , Advocate**
9	**Accused represented by**	**:**	**Smt. S.B., Advocate**

Sd/-27.06.2026.

(Smt.NANDINI.M.N)
Civil Judge & JMFC.,
Koppa.

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

This is a complaint filed by the complainant U/Sec. 200 of Cr.P.C for the offence punishable under Sec.138 of **Negotiable Instrument Act** as against the accused praying to punish the accused for the said offence.

2. **The brief facts of the complainant's case are as follows:**

The case of the complainant is that, the accused is well known to the complainant for several years. On that basis the accused has borrowed a hand loan of Rs.1,10,000/- from the complainant and for repayment of the same, accused had issued cheque dated 02.02.2021 for Rs.1,10,000/-, drawn on Vijaya Bank (Now Bank of Baroda), Balehonnuru Branch, Cheque bearing No. 368691 in favour of complainant. The accused has assured the complainant that the said cheque will be honoured when it presented. As per the request of the accused, the complainant present the aforesaid cheque for enchashment through Karnataka Gramina Bank (Pragati Krishna Grameena Bank), Jayapura Branch, as cheque is payable at par at all branches, the said cheque dishonored and returned unpaid for the reason “Funds Insufficient”.

3. Thereafter, the dishonour of the cheque was intimated to the accused by issued a legal notice by R.P.A.D. and ordinary post on 31.03.2021 calling upon the accused to pay the amount shown in the aforesaid cheque within 15days from the date of receipt of said notice. The notice sent to accused through RPAD and ordinary post to 1st address is duly served on 03.04.2021 and te notice sent to accused to the 2nd address is returned as unclaimed. The intimation is served on 07.04.2021. The accused has given a feeble reply, but not paid the amount. on 25.07.2017. The notice sent to the accused was returned on 03.08.2017 with shara ‘Not

claimed'. The accused has not paid cheque amount and deliberately and intentionally avoided the legal notice issued by the complainant. Hence, the complainant having no other option has filed the present case by alleging that the accused with an intention to cheat him has issued the said cheque.

4. Upon taking cognizance and the sworn statement of the complainant was recorded and as per the direction of the **Hon'ble Supreme Court of India in Indian Bank Association and others V/s Union of India and other (2014) 5 SCC 590** the sworn statement was treated as the complainant evidence. The complainant was examined as PW.1 and documents marked as Ex.P.1, Ex.P.1(a) to Ex.P8 and the complainant side evidence was closed. Thereafter, the summons was issued against the accused. The accused appeared through his counsel and was released on bail. The plea of accused recorded by this Court. The accused pleaded not guilty and claimed that he has defence to make and on the same day the counsel for the accused filed application under section 145(1) of N.I.Act to cross examine of PW.1. Hence, the case was posted for cross examination of PW.1.

5. Thereafter, sufficient opportunity was given to the accused. But he did not present before this court and failed to cross-examine of PW.1. Hence case was posted for record of the statement of accused under Section 313 of Cr.P.C. But the accused has remained continuously absent before the Court and in spite of giving him sufficient opportunity. Hence, the statement of the accused under Section 313 of Cr.P.C. was dispensed with and his defence evidence was also taken as nil. And the matter was posted for arguments.

6. Heard the arguments on both sides.

7. On the basis of above contentions and documents, the following point that arise for my consideration are:

1) Whether the complainant proves beyond all reasonable doubts that the accused has issued cheque bearing No.368691, dated 02.02.2021 drawn on Vijaya Bank (Now Bank of Baroda), Balehonnuru Branch for a sum of Rs.1,10,000/- towards the discharge of legally recoverable debt, which came to be dishonored as “Funds Insufficient” and further the accused has failed to clear the cheque amount within the statutory period in spite of issuance of legal notice by the complainant and thereby the acused has committed an offence punishable under section 138 of Negotiable Instrument Act?

2) What order?

8. My findings on the above points are as under:

Point No.1: In the Affirmative
Point No.2 : As per final order
for the following:

:R E A S O N S:

9. **Point No.1:** It is much relevant to discuss about the ingredients of Section 138 of N.I. Act to constitute the offences unedr this Act. In this regard, the complainant has to show:

i) That the cheque was belongs to the accused;

ii) Such cheque was issued towards legally recoverable debt;

iii) The said cheque came to be dishonored;

iv) The accused has not paid the amount covered under the cheque even after receipt of notice within stipulated time;

10. To substantiate his case, the complainant has examined himself as PW.1 and Ex.P.1, Ex.P.1(a) to Ex.P.8 documents are marked. First, for the purpose of establishing the prima facie case, if we perused the documentary evidence filed by the complainant which are marked as Ex.P.1, Ex.P.1(a) to Ex.P.8. The

Ex.P.1 is a cheque, dated 02.02.2021. Ex.P.1(a) is the signature of the accused. The said Ex.P.1 was presented and the endorsement given on 03.03.2021, which is within the stipulated period. As such, the requirement under section 138(a) of N.I. Act is fulfilled. Further, upon presentation of the said cheque Ex.P.1, the drawee bank has given endorsement that the said cheque Ex.P.1 was returned unpaid for the reason of "Funds Insufficient". The said endorsement of the bank is marked as Ex.P.2. Thereafter, the complainant has issued lgeal notice dated 31.03.2021, which is marked as Ex.P.3. The cheque was dishonored and cheque was duly served on 03.04.2021 as per Ex.P.6. The legal notice was issued on 31.03.2021, which is within 30 days of the receipt of information of cheque being unpaid. As such, the requirement under section 138(b) of N.I. Act is also fulfilled. The said Ex.P.3 legal notice sent to the accused on 03.04.2021. The complaint was filed on 18.05.2021, which is within the period of limitation. As such, the requirement under Section 138(c) of N.I. Act are also fulfilled.

11. By considering these ingredients of documentary evidence, it can be held that the components of section 138 of N.I. Act are fulfilled. Keeping this in view let us proceed to examine the oral evidence available on the record.

12. I am of the opinion that there is no need of repeating the entire case of the complainant as it is already narrated in the inception of the judgement.

13. By considering this and also on the evidence available on the record it is admitted that the Ex.P.1 cheque is belongs to the accused and the Ex.P.1(a) signature is also of accused. The complainant has examined himself as PW.1 by reiterating the entire contents of the complaint alleging that the accused is well known to him and have borrowed a hand loan of Rs.1,10,000/- from the him and for repayment of the same, accused had issued cheque dated 02.02.2021 for Rs.1,10,000/-, drawn on Vijaya Bank (Now Bank of Baroda), Balehonnuru Branch, Cheque bearing No. 368691 in his favour. The accused has assured him that the said cheque will be honoured when it presented. As per the request of the accused, he present the aforesaid cheque for enchashment through Karnataka Gramina Bank (Pragati Krishna Grameen Bank), Jayapura Branch, as cheque is payable at par at all branches, the said cheque dishonored and returned unpaid for the reason “Funds Insufficient”. In account of the accused. In this regard the learned counsel for the accused has cross examined the PW.1. The cross of PW1 is taken as

Nil. Even sufficient time has been given to the accused he has failed to keep himself present before the Court. Hence, the statement of the accused Under Sec. 313 Cr.P.C. is was dispensed with and the defence evidence was also taken as nil after applying the Indian Bank Association V/s Union of India case. In order to avoid delay in the proceedings, especially in the nature of case relating to offence punishable under section 138 of N.I. Act, heard the argument from the complainant side. The accused regularly remained absent before this Court without any specific reason. Then the attitude of the accused shows that he is protracting the proceedings without any reason.

14. After observation of the evidence of the PW-1 it is clearly noticed that the PW1 has filed this case against the accused from the year of 2021. More over, in this case, the accused has not taken any sufficient defence. In spite of giving sufficient opportunities to him to lead defence evidence, he has failed to lead the defence evidence. Therefore, the accused has elicited nothing from his mouth.

15. It is also pertinent to note that considering the factual aspect of the case as well as proceedings under Section 138 of N.I.

Act, it is settled law that same has to be concluded expeditiously in the light of guidelines issued by the Courts 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 not of the fact that complainant is running from pillar to pillar after filing of the case and when the material discloses that the accused did not bothered, Court has to exercise discretion and proceed with the case by dispensing with statement under Section 313 of the Code. The accused has no regard for directions of the Court. When such being the case, it is the discretion of the Magistrate to dispense with the recording of Section 313 of Cr.P.C.

16. When the accused failed to prove the documentary evidence which were marked as Ex.P.1, Ex.P.1(a) to Ex.P.8 and also when the accused has admitted that Ex.P1 cheque and Ex.P1(a)

signature belongs to him, there can be a positive finding in respect of issuance of cheque.

17. By considering all these reasons there is a positive finding in respect of issuance of cheque. When there is initial burden of the complainant is proved, the onus and the burden is shifted on the accused to prove his defence.

18. Once the issuance and signature is proved, it is the burden of the accused to rebut the presumptions under section 138 and 139 of the N.I. Act, which is available in favour of the complainant. The same was observed in the following judgement of Hon'ble High Court of Karnataka.

K.L.J. 2000(3) Page 481 Dr.K.G. Ramachandra Gupta & Another V/S Dr. G. Adinarayana.

> **"NEGOTIABLE INSTRUMENTS ACT, 1881, Sections 138 and 139 – Cheque – Presumption about drawing of – Signature on cheque, admitted to be that of accused – Held, presumption envisaged in Section 139 that cheque was issued for discharging antecedent liability existing on date which cheque bears, can be legally drawn."**

19. As discussed already the complainant has given satisfactory answer about that the accused is well known to complainant and as hand loan from the complainant and the accused had issued cheque dated 02.02.2021 for Rs.1,10,000/-, drawn on Vijaya Bank (Now Bank of Baroda), Balehonnuru Branch, Cheque bearing No. 368691 in favour of complainant. No doubt that the complainant has to establish the existence of legally recoverable debt. The complainant in his chief examination has stated on oath and as per his complaint and legal notice and chief examination affidavit. For the repayment of the above said amount the accused has issued the Ex.P1 cheque, which came to be dishonored. Under the presumption available under section 118 and 139 of the N.I. Act, if the accused is taking up the defence of non-passing off of the consideration mentioned in any Negotiable Instrument, it is his/accused burden to rebut the presumption. But, the accused has not given satisfactory probable defence to accept or to rebut the statutory presumptions available in favour of the complainant.

20. The trial of cases under N.I. Act is supported with the presumption available under section 118 and 139 of N.I. Act. For

the proper adjudication of the matter the accused has to rebut the above said presumption provided under the N.I. Act in favour of the complainant through other evidence. Mere denial is not enough to rebut the presumption to the extent that the Ex.P1 cheque was not backed up by the consideration as the accused admitted the signature in the Ex.P1 cheque. Hence, without any hesitation it can be held that the presumption available under section 138 of N.I. Act in favour of the complainant stands unrebutted.

21. Further, the transaction and issuance of cheque is proved before this court. Section 139 and 118 of N.I. Act has favourable presumptions in favour of the complainant. These presumptions are supported by the admissions made by the accused in respect of cheque and the signature. The accused has taken the defence that the complainant has filed a false case against him. If the complainant has really misused the cheque and falsely filed the case against the above said accused, then the accused definitely has to take the legal action against the complainant. The accused has also not produced any single document or evidence before this court to disprove the case of the complainant. When the presumptions are not rebutted and defence not proved by the evidence placed by the complainant, the burden

shifts upon the accused to rebut the presumption. The accused not placed any probable defence to disprove the case of the complainant. Hence, the defence of the accused is not acceptable in the absence of proper evidence. Thereby, it can be concluded that the Ex.P1 cheque was issued in the nature provided under section 138 of N.I. Act. Mere denial is not sufficient to rebut the presumption in favour of the complainant. In this regard, it is very incumbent to quote the following judgements of the Apex Court.

A.I.R. 2010 SC 1898 Rangappa V/S Mohan

> **“The presumption mandate by Sec. 139 of the Act does indeed including the existence of the legally enforceable debt or liability.” Further, in the judgement quoted supra it is also held that:**
>
> **“The burden of the drawer of the instrument is not just to create a doubt or offer explanation, but such explanations has to be proved satisfactorily”.**

A.I.R. 2001 SC 2895 K.N. Beena V/S Muniyappan and Another:

"The burden to prove the consideration for the cheque lies on the accused if not rebutted, the presumption is that the cheque was issued for 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 the rebuttal of this presumption. Mere denial of averments will not be suffice to shift this burden on to the complainant."

22. These citations are squarely applicable to this case as there is admission regarding the relationship, signature on Ex.P1 cheque and issuance of Ex.P1 cheque. The accused has not made out any probable grounds to disprove the complainant's case. On the other hand, the complainant successfully proved his case beyond all reasonable doubts. As such, the point No. 1 is answered in the affirmative.

23. **Point No. 2:** In view of the above findings on point No. 1, I proceed to pass the following order.

ORDER

Acting under Sec. 255(2) of the Cr.P.C 1973. The accused is convicted for the offence punishable U/Sec.138 of the Negotiable Instruments Act.

In view of the conviction, the accused shall undergo simple imprisonment for a period of six months and shall pay fine of Rs.1,15,000/- out of which Rs.1,10,000/- shall be paid to the complainant in payment of compensation. In default of the payment of fine, the accused shall undergo simple imprisonment for further period of 2 months.

The remaining balance amount i.e., Rs.5,000/- shall be confiscated to the State.

The bail bond and surety bond of the accused stands cancelled.

The office is directed to furnish the free copy of judgement to the accused. Call on 27.07.2026.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 23rd day of June, 2026.)

Sd/- 27.06.2026.

(Smt. Nandini M.N.)
Civil Judge & JMFC.,
Koppa.

ANNEXURE

List of witnesses examined for the complainant:

PW 1: Sukumara

List of witnesses examined for the accused:

- NIL -

List of documents marked for the complainant:

Ex.P1: Original Cheque

Ex.P1(a): Signature of the accused

Ex.P2: Bank endorsement

Ex.P3: Legal Notice

Ex.P4-5: Two Postal receipts

Ex.P6: Postal acknowledgement

Ex.P7: Postal cover

Ex.P7(a): Legal notice

Ex.P8: Reply notice

List of documents marked for the accused:

- NIL -

M N NANDINI
Digitally signed by M N NANDINI
Date: 2026.06.29 17:24:50 +0530

Sd/- 27.06.2026.
(Smt.NANDINI.M.N)
Civil Judge & JMFC.,
Koppa.