



**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE**

PRESENT: **Smt. Suraksha K.K.** B.B.M.,LL.B.,
I Addl. Civil Judge & JMFC.,
Mudigere.

DATED THIS THE 04th DAY OF JUNE 2026

CRIMINAL CASE NO:453/2023

BETWEEN :

Smt. Prathima H.D.,
Aged about 40 years,
W/o Ravi K.B.,
R/o Kalmane Village,
Balur Hobli, Mudigere Taluk.

...Complainant

(By Smt. Bhagya G.N, Adv.,)

AND :

Sri.Harish,
Aged about 30 years,
S/o Narayana,
R/o Yarambi Village, Jenugadde Post,
Khandya Hobli,
Chikkamagalur Taluk.

... Accused

(By Sri.K.R.Harshanth, Adv.,)

JUDGMENT

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

2. It is the case of complainant that the accused has borrowed a sum of ₹1,40,000/- on 06.11.2022 from the complainant for his family necessity and towards the repayment of the said loan the accused has issued a post dated cheque bearing



No.337130 dated 06.02.2023 drawn on Karnataka Gramin Bank, Kadabagere Branch.

3. The complainant presented the said cheque for encashment through Karnataka Gramin Bank, Kottigehara Branch. But the said cheque has been dishonored and returned with an endorsement "Funds Insufficient" dated 06.02.2023. Thereafter, the complainant informed the accused about the dishonor of the cheque and also issued legal notice to the accused on 10.02.2023 by RPAD. The legal notice was served to the accused on 13.02.2023, but the accused failed to reply the said notice or pay the amount to the complainant in spite of issuance of notice. Thereby the accused has committed an offence punishable under Section 138 of Negotiable Instruments Act.

4. Thereafter, the complainant filed affidavit by way of sworn statement and also marked documents as per Ex.P1 to 5 on the same day this Court has took cognizance for the said offence and registered the criminal case against the accused and issued summons to the accused.

5. On issuance of summons the accused person appeared before the Court through his counsel and enlarged on bail. The substance of accusation is read over and explained to the accused for which he pleaded not guilty and claimed to be tried.

6. Sworn statement of complainant is treated as examination in chief of PW1 and the documents at Ex.P1 to P5 are treated as part of complainant evidence. After closure of complainant evidence, the incriminating substances appearing against the



accused is read over to him and his statement is recorded as required under Section 313 of Cr.P.C. Accused has denied the incriminating substances appearing against him. On the other hand, the accused examined himself as DW1, but did not mark any documents.

7. Heard the arguments addressed by the learned counsels for both side and also perused the entire materials available on record. Now, the points that arise for consideration are as follows:

- 1. Whether the complainant proves that, he has complied all mandates of proviso to Section 138(a) to (c) and Section 142(b) of N.I.Act?**
- 2. Whether the complainant proves beyond all reasonable doubt that, the accused had issued a cheque bearing No.337130 dated 06.02.2023 drawn on Karnataka Gramin Bank, Kadabagere Branch in favor of complainant towards the repayment of amount due in favour of the complainant, when presented by the complainant through her banker, came to be dishonored with an endorsement "Insufficient Funds" and despite issuance of legal notice, the accused failed to pay amount covered under the cheque and thereby accused has committed the offence punishable**



**under Section 138 of Negotiable
Instruments Act?**

3. What order?

8. The findings of this court on above points are as under:

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: The complainant in order to prove her case got examined herself as PW-1 and filed affidavit in lieu of her examination in chief and reiterated the complaint averments and in support of her oral evidence got marked Ex.P-1 to Ex.P-5. Ex.P-1 cheque, Ex.P-2 is the Endorsement issued by the bank, Ex-P-3 legal notice, Ex.P4 Postal receipt and Ex.P5 postal acknowledgment.

10. In order to disprove the case of the complainant, accused examined himself as DW1 but not marked any documents on his behalf in support of his contention.

11. However, in order to attract the presumption available under section 139 of N.I. Act, the complainant has to discharge initial burden. In the instant case Ex.P-1 cheque presented within 3 months from the date of issuance, Ex.P.2 is the Endorsement issued by the complainant's bank dated 06.02.2023, soon after the



complainant has issued legal notice on 10.02.2023 and the same has been served to accused on 13.02.2023, but the accused failed to make good within 15 days from the date of demand notice. Hence, the complainant has complied all mandates of clause (a) to (c) of the proviso with section 138 of NI act.

12. In the present case, the demand notice issued on 10.02.2023 and the same has been served on 13.02.2023 and the cause of action arose on or from 28.02.2023 i.e., when the accused failed to make payment. Hence, the complainant shall file the complaint within 30 days from 28.02.2023 and the complainant has presented the present complaint on 10.03.2023. Hence, the present complaint has been filed within 30 days from the date on which cause of action was arose. Hence, the complainant has complied all mandates of sec.138 of N.I.Act. Hence, point No.1 is answered in the '**Affirmative**'.

13. Point No.2:- It is the case of complainant that the accused has borrowed a sum of ₹1,40,000/- from the complainant and towards the repayment of the said loan the accused has issued a post dated cheque bearing No.337130 dated 06.02.2023 drawn on Karnataka Gramin Bank, Kadabagere Branch. The complainant presented the said cheque for encashment through Karnataka Gramin Bank, Kottigehara Branch. But the said cheque has been dishonored and returned with an endorsement "Funds Insufficient" dated 06.02.2023. Thereafter, the complainant informed the accused about the dishonor of the cheque and also issued legal notice to the accused on 10.02.2023 by RPAD. The legal notice was served to the accused on 13.02.2023, but the



accused failed to reply the said notice or pay the amount to the complainant in spite of issuance of notice.

14. In order to prove her case, the complainant got herself examined as PW.1 and got marked 5 documents as Ex.P1 to Ex.P-5. Ex.P-1 is the cheque issued by the accused in favor of complainant for ₹1,40,000/-, Ex.P2 is the endorsements issued by the bank on presentation of Ex.P1 for encashment. Ex.P-3 is the legal notice dated 10.02.2023 issued by complainant against the accused by demanding the return of amount due towards the complainant, Ex.P4 and 5 are postal receipt and postal acknowledgment. Now, let's ascertain whether the complainant is entitled to the presumption available U/s. 139 of Negotiable Instruments Act. As per sec 139 of NI Act, it shall be presumed unless the contrary is proved that the cheque in questioned was issued in whole or in part of any legally recoverable debt or liability.

15. Herein the present case, the accused person is not denying the transaction and issuance of Ex.P1. The dispute is that, the transaction was held between the husband of the complainant i.e., one Ravi and accused person. In pursuant to the said transaction the accused person had issued Ex.P1 in favour of one Ravi and after the completion of the transaction between Ravi and accused person, the Ex.P1 has not been return to the accused person and the same has been misused by the wife of the Ravi i.e., the complainant herein. In order to support the said contention, the accused person neither produced the documents nor examined any witnesses. But during the cross examination the accused



person himself states that he has not took any action against the Ravi and his wife i.e., the complainant herein, for misusing the Ex.P1 issued by the accused person with respect to the transaction between himself and one Sri.Ravi. If it is true, that one Sri.Ravi has retained the Ex.P1 issued by the accused, even after the completion of the transaction between them and the said Ex.P1 has been misused by the complainant herein, then the question is why the accused person kept mum till now without taking action against the complainant or his husband one Sri.Ravi. These aspects creates doubt regarding the contention taken by the accused person.

16. The accused person further contends that the complainant is not financially fit to lend a sum of ₹1,40,000/- to the accused person and she is not having any individual income and she is depending on her husband for her livelihood. In order to prove the said contention except the bare allegation, the accused person has not produced any documents. On the other hand, learned counsel for the complainant has filed the bank statements of the complainant in support of her argument, which are not marked on behalf of the complainant herein. But, on perusal of said statements it clearly disclose that, the complainant is having a individual income as she stated in her examination. Hence, the said contention of the accused cannot be taken into consideration. Moreover, during examination accused person himself admits about the transaction with complainant herein.

17. On the other hand learned counsel for accused produced citation i.e., in Sri.Aravind Kumar Vs. Sri.Eshwar Singh before



Judicial Magistrate 1st Class Dwaraka Court New Delhi. In the said case the dispute is with respect to tampering of Cheque in question. But herein the present case, the accused person is not denying genuinity of the material and during Cross examination he himself affirming that the Ex.P1 belongs to him by stating that he had issued Ex.P1 to one Sri.Ravi, who is husband of Complainant. Hence, the fact of the said case are not applicable to the case on hand.

18. On perusal of the material on record this Court has not found any material on behalf of the accused in order to rebut the presumption under Section 139 of NI Act. Therefore accused person has utterly failed to rebut the presumption either through cross examination or through defense evidence. Hence, the court is left with no reasonable doubt about the existence of liability.

19. The complainant has complied with all legal requirements, the cheque was presented within time, dishonored due to Funds Insufficient, a notice was issued within the prescribed period and the complaint was filed within limitation. Therefore the ingredients of section 138 of the NI Act stand proved beyond doubt. Accordingly, this court answered point No.2 in the '**Affirmative**'.

20. Point No.3: In view of the above findings, so also keeping in view the facts of the case, this Court proceeds to pass the following:



ORDER

The accused is found guilty of offence punishable U/Sec. 138 of Negotiable Instruments Act.

By exercising the power under Section 255(2) of Cr.P.C, the accused is convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced to pay fine of ₹1,45,000/-, in default to undergo simple imprisonment for Six months.

It is hereby ordered that out of the fine amount, a sum of ₹1,40,000/- shall be paid to the complainant as compensation and remaining ₹5,000/- shall be defrayed to the state expenses.

Bail bond stands canceled.

Supply a free copy of this Judgment to the accused.

(Dictated to the Stenographer, transcribed by him, corrected and then pronounced by me in the open court on this the **04th day of JUNE 2026, at Mudigere.**)

(Suraksha.K.K)
I Addl. Civil Judge & JMFC.,
Mudigere.

**ANNEXURE****LIST OF WITNESSES EXAMINED ON BEHALF OF THE COMPLAINANT:-**

PW1 : Prathima H.D.

LIST OF DOCUMENTS MARKED ON BEHALF OF THE COMPLAINANT:-

Ex.P1 : Cheque dtd: 06.02.2023

Ex.P1(a) : Signature of accused

Ex.P2 : Bank endorsement

Ex.P3 : Legal notice dated 10.02.2023

Ex.P4 : Postal receipt

Ex.P5 : Postal acknowledge

LIST OF WITNESSES EXAMINED ON BEHALF OF THE ACCUSED :-

DW1 : Harish

LIST OF DOCUMENTS MARKED ON BEHALF OF THE ACCUSED :-

- Nil-

(Suraksha.K.K)
I Addl. Civil Judge & JMFC.,
Mudigere.

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