



IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC.,
AT MUDIGERE.

-: P R E S E N T :-

Sri.YOGESHA M.R.,_{B.A.LLB.,}
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.

*Dated this the **25th day of JULY, 2026.***

CC.No.1001/2025

COMPLAINANT : Harish.S, 309 yrs,
S/o Sundara Poojary,
R/at Daradahalli Village & Post,
Kasaba Hobli, Mudigere Taluk,
Chikkamagaluru District.
(Rep., by Sri.***SD.***, Advocate)

V/s

ACCUSED : Pradeep, 38 yrs,
S/o Shankara Shetty,
R/at Poornima Bangle Store,
Near Post Office, Belur Road,
Mudigere Town & Post,
Chikkamagaluru District.
(Rep., by Sri.***MMR.***, Advocate)

Date of Complaint : 19.04.2025
Offence alleged : Section 138 of NI Act.
Evidence commenced on : 02.05.2025
Judgment pronounced on : 25.07.2026.
Opinion of Presiding Officer: Accused found not guilty.

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.

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

The complainant has filed the present private complaint against the accused U/Sec.200 of Cr.P.C., alleging that the accused has committed an offence punishable U/Sec.138 of Negotiable Instruments Act.

2. In brief, the facts in the complaint are as under;

(a). The accused has borrowed a sum of Rs.6,00,000/- on 11.06.2024 from the complainant towards

his family necessities. In this regard, the accused towards the discharge of the said loan amount, issued a cheque bearing No.161947 Dated 28.02.2025 for a sum of Rs.6,00,000/- in favour of the complainant drawn on State Bank of India, Mudigere Branch.

(b). The said cheque was presented by the complainant to his banker to the said bank for collection. But the same was returned on 06.03.2025 with a memo stating that **“Funds Insufficient”**. Thereafter, the complainant on 15.03.2025 issued a legal notice to the accused calling upon him to pay the cheque amount within 15 days from the date of receipt of the notice. The said legal notice was served to the accused on 19.03.2025. Despite demand notice, the accused has failed to repay cheque amount. Hence, the accused has committed an offence punishable U/Sec.138 of Negotiable Instruments Act.

3. After filing of complaint, this court has perused the documents and taken cognizance for the offence punishable U/Sec.138 of Negotiable Instruments Act., and recorded sworn statement of the complainant with documentary evidence. After being satisfied that, there are prima-facie material to proceed against the accused, summons was issued. Thereafter, the accused has put appearance through his counsel and got released on bail. The substance of accusation has been recorded, read over and explained to the accused in the language known to him. He has pleaded not guilty and claims to be tried.

4. In support of the compliant, the complainant got examined himself as PW.1 and adduced as many as 5 documents as per Ex.P1 to P5. After examination-in-chief, inspite of sufficient opportunity the complainant failed to tender himself for cross-examination. Evidence of the PW.1 is not tested by cross-examination as such it is no evidence

in the eye of law, due to this recording of statement of accused under section 351 of BNSS was dispensed. The accused did not offer defence evidence.

5. Heard the arguments and perused the material available on record.

6. The points that arise for this Court consideration are under;

∴ P O I N T S ∴

1. *Whether the complainant proves, the accused in discharge of legally recoverable debt issued cheque bearing No.161947 for a sum of Rs.6,00,000/- Dated 28.02.2025 and the same was dishonored. Despite demand notice, the accused has failed to repay cheque amount and thereby committed an offence punishable U/Sec.138 of Negotiable Instruments Act ?*

2. *What order ?*

7. This court findings to above raised points are as under;

POINT NO.1 : **NEGATIVE**

POINT NO.2 : As per final order,
for the following;

-.: R E A S O N S :-**POINT NO.1:-**

8. It is pertinent to note that; whenever a private complaint is filed seeking prosecution of the accused for an offence punishable under section 138 of NI Act, if the issuance of cheque and the signature on the cheque is accepted and admitted by the accused; an initial presumption has to be raised by the court in favour of the complainant that the cheque in question was issued towards legally recoverable debt or liability. This presumption is rebuttable presumption. Such rebuttal evidence has to be placed before the court by the accused. It is well known that, the accused can rebut the said legal presumption either by cross-examination of complainant or by leading evidence.

9. The complainant in support of his case, examined himself as PW.1 and reiterated the averments made in the complaint and adduced as many as 5 documents as per

Ex.P1 to P5. Ex.P1 Original Cheque Dated 28.02.2025 for ₹.6,00,000/-; Ex.P1(a) Signature of the Accused; Ex.P2 Bank Endorsement Dated 06.03.2025; Ex.P3 Legal Notice Dated 15.03.2025; Ex.P4 Postal receipt; Ex.P5 Postal Acknowledgment Due Card.

10. According to complainant, the accused borrowed a sum of Rs.6,00,000/- for his family necessities and towards the discharge of the said loan amount, the accused was issued the aforesaid cheque. The case was posted for cross of PW.1. The PW.1 remained absent on 10.12.2025, 06.01.2026, 02.04.2026, 12.06.2026 and 21.07.2026.

11. After examination-in-chief, the PW.1 failed to tender himself for cross-examination, due to this, it was taken as PW.1 not tendered for cross-examination, which shows that the evidence of PW.1 is not tested by the acid test of cross-examination, due to this, his evidence loses its

credibility and no relief can be granted on the basis of such evidence. That apart; it is no evidence in the eye of law because evidence means examination-in-chief and cross-examination. Since the evidence of PW.1 has no evidentiary value, the complainant is not entitled for any relief.

12. The Hon'ble Supreme court of India In Criminal Appeal No.704/2018 between Jai Prakash Tiwari and State of Madhya Pradesh held that;

“The purpose of Section 313 CrPC is to provide the accused a reasonable opportunity to explain the adverse circumstances which have emerged against him during the course of trial. A reasonable opportunity entails putting all the adverse evidences in the form of questions so as to give an opportunity to the accused to articulate his defence and give his explanation- If all the circumstances are bundled together and a single opportunity is provided to the accused to explain himself, he may not able to put forth a rational and intelligible explanation. Such, exercises which defeats fair opportunity are nothing but empty formality. Non- fulfilment of the true spirit of Section 313 may ultimately

cause grave prejudice to the accused and the Court may not have the benefit of all the necessary facts and circumstances to arrive at a fair conclusion. Such an omission does not ipso facto vitiate the trial, unless the accused fails to prove that grave prejudice has been caused to him -The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. (Para 25-28)”

13. In the present, in spite of sufficient opportunity, the complainant has not tender himself for cross examination. Hence, the statement of the accused under section 351 of BNSS., is exempted. In view of the above discussions and as per the decisions of the Hon’ble Apex court, this court is of the opinion that, the complainant has failed to prove that the cheque i.e., Ex.P1 was issued by the accused towards the discharge of legally enforceable debt. *Hence, this court answered the point No.1 in the **Negative.***

POINT NO.2:-

14. In view of above findings on point No.1, this court proceed to pass the following ;

ORDER

The complaint filed by the complainant U/Sec.223 of BNSS., is hereby dismissed.

Acting under Section 278(1) of BNSS., the accused is acquitted for the offence punishable U/Sec.138 of Negotiable Instruments Act.

The bail bond and surety bond executed by the accused and surety will be in force for a period of six months.

*(Dictated to the Stenographer directly in computer, revised, corrected by me and then pronounced in the open court on this the **25th day of JULY, 2026.**)*

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.

-: ANNEXURES :-**List Of Witnesses Examined On Behalf Of Complainant:-**

PW.1 : HARISH.S

List Of Documents Got Exhibited On Behalf Of Complainant:-

Ex.P1 : Original Cheque Dated 28.02.2025 for
₹.6,00,000/-

Ex.P1(a) : Signature of the Accused

Ex.P2 : Bank Endorsement Dated 06.03.2025

Ex.P3 : Legal Notice Dated 15.03.2025

Ex.P4 : Postal receipt

Ex.P5 : Postal Acknowledgment Due Card

List Of Witnesses Examined By The Accused: Nil

List Of Documents Got Exhibited By The Accused: Nil

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.

VP

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