



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC.,
MUDIGERE**

Present: **Sri. Prakash P.M,** M.B.A. LL.B.,
Senior Civil Judge and J.M.F.C
Mudigere.

C.C No. 222/2026

Dated on this 20th Day of June 2026.

Complainant: **Nagarathna N.R.**
C/o Kenchappa I.D.
#5 Sannidhi Layout,
Vidhya Nagara,
Hesgal Road,
Mudigere Taluk,

Rep, by her GPA Holder,
Sri. B.G. Surendra,
S/o Late. Gopala,
Aged about 36 years,
R/o Balur Village & Post,
Balur Hobli, Mudigere Taluk.
[By Sri. B.G.N., Advocate]

V/s.

Accused : **Sri. K.P. Shivakumar,**
S/o N.K. Premarajan,
Aged about 49 years,
R/o # 453 1st Floor,
12th Main, 7th Block,
H.M.T. Layout,



Vidyaranyapura, Bangalore.
North, Vidyaranyapura,
Bangalore, Karnataka, 560097.

[By Smt. S.B.A., Advocate]

1.	Date of commission of offence	After 27.02.2023 i.e., return of RPAD cover
2.	Name of Complainant	Nagarathna N.R.
3.	Date of opening of evidence	28.06.2023
4.	Date of closing of evidence	16.06.2026
5.	Offences complained of	U/Sec.138 of N.I. Act.
6.	Opinion of the Judge	Accused found guilty

**Senior Civil Judge & JMFC,
Mudigere**

:: JUDGMENT ::

This case is arising out of complaint filed under section 200 of Cr.P.C. against the accused for the offence punishable under section 138 of N.I. Act.

2. The brief facts of the case of the complainant are as under:

The accused approached the complainant on



10.08.2022 and borrowed a sum of Rs.6,00,000/- for his business on 16.08.2022. In order to repay the same, the accused issued a post-dated cheque bearing No.666159 dated: 16.11.2022 for a sum of Rs.6,00,000/- has drawn on State Bank of India, Chamundipuram, Mysore South Branch in favor of the complainant. The complainant presented the said cheque for encashment through ICIC Bank Limited, Mudigere Branch on 13.02.2023, same has been dishonored and returned with endorsement "**Funds Insufficient**" dated: 15.02.2023. Thereafter, a legal notice was issued on 24.02.2023 through RPAD "That has been unserved stating Addressee left hence returned to the sender" on 27.02.2023. In spite of repeated request, demands and legal notice accused did not repay the amount. Hence this complaint.

3. On presentation of the private complaint the court has taken cognizance of the offence and ordered to register the case as private complaint and after recording sworn statement of the complainant having



come to the conclusion that, complainant has made out prima-facie case in order to issue process to the accused. The accused appeared before this court and got enlarged on bail.

4. The accused was called upon to enter trial and upon his appearance the particulars of offence under section 138 of the Negotiable Instruments Act, 1881 was explained to him and his plea was recorded. To which he pleaded not guilty and claimed to be tried. Hence, this court has set down the case for the evidence of the complainant.

5. The GPA holder of complainant was examined as PW-1 and produced documents marked as Ex.P1 to Ex.P6, which include the cheque, bank endorsement, legal notice, postal receipt, unserved RPAD cover, unserved notice and GPA.

6. After closure of the complainant's evidence, the statement of the accused Under Section 313 of the Code of Criminal Procedure was recorded on 18.11.2025. The accused denied all incriminating circumstances appearing



against him in the prosecution evidence and expressed his intention to adduce defence evidence. Thereafter, the accused remained absent before the Court. Despite issuance and repeated reissuance of non-bailable warrants, the police authorities have failed to secure his presence. The conduct of the accused clearly indicates that he has intentionally remained absent and has not availed the sufficient opportunities granted by the Court to lead defence evidence. In the circumstances, this Court is of the opinion that no useful purpose would be served by granting any further opportunity. Accordingly, the right of the accused to adduce defence evidence is hereby treated as closed.

7. Heard the arguments of learned counsel for the complainant.

8. On careful consideration of contentions of both the sides, the following points arise for consideration:

1. Whether the Complainant proves that the accused has issued the cheque for the legally recoverable debt as alleged by him?



2. Whether the accused has committed the offence punishable under section 138 of NI Act?

3. What order or sentence?

9. The above points are answered as under:

Point No.1 : In the **Affirmative.**
Point No.2 : In the **Affirmative.**
Point No.3 : As per final order for the following

:: R E A S O N S ::

10. Point Nos.1 and 2: In order to avoid the repetition I have taken up these points together for common discussion.

11. It is the specific case of the complainant that the accused approached him and borrowed a sum of Rs.6,00,000/- for his business requirements and towards repayment of the said amount, issued cheque bearing No.666159, dated 16.11.2022 for a sum of Rs.6,00,000/- drawn on State Bank of India, Chamundipuram, Mysore South Branch. It is further contended that when the said cheque was presented



for encashment through ICICI Bank Limited, Mudigere Branch, it came to be dishonoured on 15.02.2023 with the endorsement **“Funds Insufficient”**. Thereafter, the complainant caused issuance of a statutory demand notice dated 24.02.2023 calling upon the accused to make payment of the cheque amount. Despite service of notice being deemed in law and despite sufficient opportunity, the accused failed to comply with the demand. Hence, the present complaint came to be filed.

12. In order to substantiate his case, the complainant has examined his GPA holder as PW.1. It is pertinent to note that PW.1 has reiterated the averments made in the complaint and has deposed regarding the transaction between the complainant and the accused, issuance of cheque by the accused, dishonour thereof and issuance of statutory notice.

13. The complainant has relied upon documentary evidence marked as Ex.P1 to Ex.P6. On



perusal of the record, Ex.P1 is the cheque dated 16.11.2022 for a sum of Rs.6,00,000/-. Ex.P1(a) is the signature of the accused found on the cheque. Ex.P2 is the bank endorsement dated 15.02.2023 showing dishonour of the cheque for the reason **“Funds Insufficient”**. Ex.P3 is the copy of legal notice dated 24.02.2023. Ex.P4 is the postal receipt evidencing dispatch of notice. Ex.P5 is the returned RPAD cover containing the postal shara "Addressee left, returned to sender". Ex.P5(a) is the notice contained therein and Ex.P6 is the General Power of Attorney executed in favour of PW.1.

14. Herein it is relevant to observe that the accused has not disputed the cheque at Ex.P1 nor the signature found thereon at Ex.P1(a). Once the execution of cheque and signature thereon are admitted or not disputed, the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act immediately come into operation. The law is well settled that the Court



shall presume that the cheque was issued for consideration and in discharge of a legally enforceable debt or liability unless the contrary is proved by the accused by raising a probable defence.

15. During the course of cross-examination, PW.1 has admitted that he does not remember the date on which the complainant executed the GPA in his favour. He has further admitted that the complainant is residing at Bengaluru and that the complaint mentions the address of the complainant as Mudigere. He has also stated that due to health issues the complainant was unable to depose before the Court. Certain omissions have been elicited regarding the exact dates on which money was demanded by the complainant and the exact dates relating to presentation and dishonour of the cheque.

16. At this juncture, it is relevant to note that the aforesaid admissions elicited in the cross-examination do not go to the root of the transaction covered under Ex.P1 cheque. The inability of PW.1



to recollect certain dates or particulars does not in any manner affect the genuineness of the cheque transaction, particularly when the cheque, bank endorsement and statutory notice are all supported by documentary evidence placed before the Court.

17. The learned counsel for the accused has also elicited from PW.1 that the accused and complainant were acquainted through real estate business and that there was a proposal regarding purchase of a site at Nelamangala. PW.1 has stated that the accused had represented that he would provide a site and had received an amount of Rs.6,00,000/- in advance from the complainant. Though PW.1 has admitted that these particulars are not specifically mentioned in the complaint, the same does not improve the case of the accused. On the contrary, the said evidence clearly discloses a financial transaction between the complainant and the accused involving the amount covered under Ex.P1 cheque.

18. It is pertinent to note that the defence



suggested to PW.1 is not consistent. On one hand, suggestions were made that the accused had not borrowed any amount and was not liable to pay any amount to the complainant. On the other hand, suggestions were made regarding a site transaction and advance amount paid by the complainant to the accused. These suggestions themselves indicate the existence of monetary dealings between the parties. Mere suggestions made in cross-examination do not constitute proof of defence unless supported by acceptable evidence.

19. On perusal of the entire cross-examination of PW.1, it is seen that though several suggestions were put disputing the transaction, no material has been elicited to discredit Ex.P1 cheque or to probabalise any defence explaining the circumstances under which the cheque reached the complainant. The accused has not disputed that the cheque belongs to his account. No explanation whatsoever has been offered regarding issuance of the cheque.



20. Herein it is relevant to observe that after recording of the statement under Section 313 of Cr.P.C., the accused expressed his intention to lead defence evidence. However, despite granting sufficient opportunities, he remained absent before the Court. Non-bailable warrants issued against him could not be executed. Consequently, the right of the accused to adduce defence evidence came to be closed. Thus, the accused has not stepped into the witness box nor produced any documentary evidence to rebut the statutory presumptions available in favour of the complainant.

21. It is a settled principle of law that the presumption under Section 139 of the Negotiable Instruments Act is a rebuttable presumption. However, the burden lies upon the accused to raise a probable defence. Such rebuttal can be by way of cross-examination or by leading independent evidence. In the present case, the accused has neither elicited material sufficient to probabalise his defence nor entered the witness box to substantiate



the same. Consequently, the statutory presumption remains unrebutted.

22. As regards service of notice, the records disclose that the statutory notice was sent to the address of the accused through RPAD and the postal cover was returned with the endorsement “Addressee left”. The accused has not disputed the correctness of the address mentioned in the notice nor has he entered appearance to contend that the notice was deliberately sent to a wrong address. In such circumstances, the principle of deemed service is attracted and the requirement of Section 138(b) of the Negotiable Instruments Act stands duly complied with.

23. On careful appreciation of the oral testimony of PW.1, documentary evidence at Ex.P1 to Ex.P6, the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act, and the failure of the accused to rebut the same by adducing cogent evidence, this



Court is of the considered opinion that the complainant has successfully established that Ex.P1 cheque was issued by the accused towards discharge of a legally enforceable debt or liability and that the said cheque was dishonoured for insufficiency of funds.

24. The complainant has further proved that after dishonour of the cheque, a statutory demand notice was issued within the prescribed period and despite receipt/deemed service of notice, the accused failed to make payment of the cheque amount within the stipulated period. Thus, all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act stand established. Accordingly, this Court holds that the complainant has proved his case. Hence **Point Nos.1 and 2 in the affirmative.**

25. Point No.3: In view of the above findings on point Nos. 1 and 2, this court proceeds to pass the fallowing.



ORDER

Acting u/s 255(2) of Cr.P.C. the accused is convicted for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881.

The accused is sentenced to pay a fine of Rs.6,05,000/-. In default of payment of fine, the accused shall undergo simple imprisonment for a period of 6 (Six) months.

Out of the fine amount, a sum of Rs.6,00,000/- shall be paid to the complainant as compensation under Section 357 of the Code of Criminal Procedure, 1973.

The remaining Rs.5,000/- shall be credited to the State.

Bail bond of the accused stands cancelled.



Free copy of the judgment be
furnished to the accused.

(Dictated to the stenographer, directly on computer, typed by her and corrected by
me and pronounced in the open Court this the 20th day of June 2026)

(Prakash.P.M)
Senior Civil Judge & JMFC,
Mudigere.

:: A N N E X U R E ::

1. Witness examined for the Complainant:

PW.1 : B.G. Surendra (GPA holder)

2. List of documents exhibited for the prosecution:

Ex.P.1 : Original Cheque.
Ex.P.1(a) : Signature
Ex.P.2 : Bank endorsement
Ex.P.3 : Legal Notice
Ex.P.4 : Postal receipt
Ex.P.5 : Unserved RPAD cover
Ex.P.5(a) : Notice contained in postal cover
Ex.P.6 : G.P.A.

3. Witness Examined for the defence:

Nil

4. List of documents exhibited for the defence:

Nil

(Prakash P.M.)
Senior Civil Judge & JMFC,
Mudigere.