KACM410003402026

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. 223/2026

Dated on this 5th Day of August 2026.

Complainant: **Sri. D.B. Jayaram,**
S/o D.S. Biligowda,
Aged about 50 years,
Agriculturist,
R/o Devarunda Village & Post,
Gonibeedu Hobli,
Mudigere Taluk,
Chikkamagaluru District.

[By Sri. B.T.N., Advocate]

V/s.

Accused : **Sri. Sunilkumara. J.D.**
S/o Dyavegowda,
Agriculturist
Aged about 48 years,
R/o Jenubylu Village,
Jogannakere Post,
Gonibeedu Hobli,
Mudigere Talluk,
Chikkamagaluru District.

[By Smt. M.M.R., Advocate]

1.	Date of commission of offence		After 27.09.2023 i.e., date of refusal of RPAD/legal notice
2.	Name of Complainant		Sri. D.B. Jayaram,
3.	Date of opening of evidence		25.10.2023
4.	Date of closing of evidence		23.06.2026
5.	Offences complained of		U/Sec.138 of N.I. Act.
6.	Opinion of the Judge		Accused found guilty.

PRAKASH P M

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

:: <u>JUDGMENT</u> ::

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:

It is the case of the complainant that the accused borrowed a sum of ₹9,00,000/- from him on 01.05.2023. In discharge of the said legally enforceable debt, the accused issued Cheque No.988348 dated 25.08.2023 for

₹9,00,000/- drawn on Canara Bank, Jogannanakere Branch, bearing Account No.5536101000640, in favour of the complainant. The complainant presented the said cheque for encashment through Chikmagalur D.C.C. Bank Ltd., Mudigere Branch, on 08.09.2023; however, the cheque came to be dishonoured on the same day with the endorsement "Funds Insufficient". Thereafter, despite being informed of the dishonour and called upon to make payment, the accused failed to discharge the liability. Consequently, the complainant caused a statutory demand notice dated 20.09.2023 to be issued to the accused by RPAD. The said notice was refused by the accused on 27.09.2023 and was returned to the sender on 05.10.2023. As the accused failed to pay the cheque amount within the statutory period from the date of deemed service of notice, the complainant has instituted the present complaint under Section 138 of the Negotiable Instruments Act.

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 complainant was examined as PW-1 and produced documents marked as Ex.P1 to Ex.P7, which include the cheque, bank endorsement, legal notice, postal receipt, postal cover, copy of notice, postal track consignment and RTC extract.

6. The accused was examined under Section 313 of Cr.P.C. and denied the incriminating evidence of P.W.1. He chose to lead defence evidence and examined himself as D.W.1 and got marked Ex.D1 and 2.

7. Heard the arguments of learned counsel for the complainant, perused the written notes of arguments furnished by the counsel for accused and perused the records.

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

:: **<u>R E A S O N S</u>** ::

10. **<u>Point Nos.1 and 2</u>**: 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, being known to him, approached him during the first week of May 2023 and borrowed a hand loan of Rs.9,00,000/- on 01.05.2023 for his business necessities. Towards discharge of the said legally enforceable debt, the accused issued cheque bearing No.988348 dated 25.08.2023 for Rs.9,00,000/- drawn on Canara Bank, Jogannanakere Branch. On presentation, the cheque came to be dishonoured for the reason **"Funds Insufficient"** as per Ex.P2. Thereafter, the complainant caused issuance of statutory legal notice as contemplated under Section 138(b) of the Negotiable Instruments Act. Though the notice sent through RPAD was refused by the accused, he failed to comply with the demand made therein. Hence, the present complaint came to be filed.

12. In order to substantiate his case, the complainant examined himself as PW.1 and relied upon Ex.P1 to Ex.P7. Ex.P1 is the cheque, Ex.P1(a) is the admitted signature of the accused, Ex.P2 is the bank endorsement, Ex.P3 is the legal notice, Ex.P4 is the postal receipt, Ex.P5 is the returned postal cover, Ex.P6is the postal track consignment and Ex.P7 is the RTC extract.

13. It is pertinent to note that during the course of trial, the accused has not disputed that Ex.P1 cheque belongs to his bank account. More importantly, while deposing as DW.1, he has categorically admitted that Ex.P1(a) signature found on the cheque is his signature. Therefore, the execution of the cheque and signature thereon stand admitted.

14. Once the execution of the cheque and signature are admitted, 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 has been issued for consideration and in discharge of a legally enforceable debt or liability unless the accused rebuts the said presumption by raising a probable defence on the touchstone of preponderance of probabilities. Thus, the initial burden cast upon the complainant stands discharged by production of the cheque and proof of its dishonour.

15. Herein it is relevant to observe that the accused has not disputed the dishonour of the cheque under Ex.P2. Likewise, the issuance of statutory notice under Ex.P3, postal receipt under Ex.P4 and returned postal cover under Ex.P5 have also remained substantially unchallenged. Though during cross-examination DW.1 initially denied refusing the notice, he has categorically admitted that the address shown in Ex.P3 is his correct address. The postal records disclose that the notice was returned with the endorsement **"Refused".** It is a settled proposition of law that refusal of notice amounts to deemed service. Hence, the mandatory requirement under Section 138(b) of the Negotiable Instruments Act also stands complied with.

16. The principal defence of the accused is not that the cheque does not belong to him or that his signature has been forged. His specific defence is that about four years prior to the institution of the complaint he had issued a signed blank cheque to one Udase Chandregowda as security in connection with arecanut business transactions and that after settlement of the said transaction, Chandregowda failed to return the cheque and in collusion with the complainant misused the same by filing the present complaint.

17. At this juncture, it is necessary to appreciate whether such defence has been probabilised through acceptable evidence.

18. On careful scrutiny of the evidence of DW.1, it is evident that except making a bald assertion regarding the alleged transaction with Chandregowda, no documentary evidence whatsoever has been produced. DW.1 has admitted in his cross-examination that no written agreement was executed with Chandregowda, no receipt evidencing repayment of money has been obtained, no account books or business records have been produced, and significantly, despite the alleged misuse of his signed cheque, he has neither lodged any police complaint nor initiated any civil or criminal proceedings against Chandregowda. He has further admitted that he did not issue any stop-payment instructions to his banker nor did he take any legal action seeking return of the cheque. Such conduct is wholly inconsistent with the ordinary course of human behaviour. Had really a signed blank cheque remained with a third party after completion of the transaction, any prudent person would have immediately taken legal recourse for recovery of the cheque or at least instructed the bank to stop its payment. The unexplained inaction on the part of the accused renders his defence highly improbable.

19. It is also relevant to note that the accused has not examined the said Chandregowda, who according to him is the central figure in the alleged misuse of the cheque. Though the entire defence revolves around the alleged transaction with Chandregowda, no attempt has been made to examine him before the Court. Such omission creates a serious dent in the defence version.

20. On perusal of the cross-examination of PW.1, the defence has mainly attempted to challenge his financial capacity to advance Rs.9,00,000/- as hand loan. However, the answers elicited from PW.1, instead of supporting the defence, disclose that PW.1 owns agricultural lands cultivating coffee, pepper and arecanut. He has specifically deposed that during the relevant year he harvested around 200 bags of coffee besides pepper and arecanut and earned annual agricultural income of about Rs.20 to Rs.23 lakhs. He has further stated that shortly before advancing the loan he had sold his coffee produce and received about Rs.20 lakhs in cash from the purchasers and out of the said amount he advanced Rs.9,00,000/- to the accused.

21. Though PW.1 has admitted that he is a BPL card holder and that his routine banking transactions are comparatively less, the same by itself cannot lead to an inference that he had no financial capacity. It is common knowledge that agriculturists in this region receive substantial sale proceeds during harvesting season and many transactions are still carried out in cash. Merely because PW.1 did not produce income tax returns or sale receipts, his otherwise consistent testimony cannot be discarded, particularly when the statutory presumption under Section 139 operates in his favour.

22. The defence has also elicited that PW.1 did not mention in the complaint or legal notice that the loan was required for arecanut business and that no written loan agreement was executed. In the considered opinion of this Court, these omissions are not material so as to discredit the entire transaction. The complainant has consistently maintained that the accused borrowed Rs.9,00,000/- on 01.05.2023 and issued Ex.P1 cheque towards repayment. Minor omissions regarding the purpose of loan or absence of written agreement do not outweigh the statutory presumption arising in favour of the complainant.

23. It is further pertinent to note that the accused himself has admitted that the signature found on Ex.P1 belongs to him and that he voluntarily handed over the cheque duly signed. Once issuance of a signed cheque is admitted, the burden heavily shifts upon the accused to establish a probable defence. Mere explanation that the cheque was issued as security to a third party, without any supporting material, cannot by itself rebut the presumption available under Sections 118(a) and 139 of the Negotiable Instruments Act.

24. The Hon'ble Supreme Court in **Rangappa v. Mohan** has categorically held that the presumption under Section 139 includes existence of legally enforceable debt and that the accused is required to rebut the same by leading probable evidence. Likewise, in **Bir Singh v. Mukesh Kumar,** it has been held that even a blank signed cheque voluntarily handed over attracts the statutory presumption and mere allegation of misuse is insufficient unless supported by convincing evidence. Further, in **Basalingappa v. Mudibasappa,** the Hon'ble Supreme Court has reiterated that although the burden upon the accused is only that of preponderance of probabilities, such burden has nevertheless to be discharged by acceptable material placed before the Court.

25. Applying the above settled principles to the facts of the present case, this Court is of the considered opinion that the defence set up by the accused is neither probable nor supported by any independent evidence. On the contrary, the complainant has successfully established issuance of Ex.P1 cheque, its dishonour under Ex.P2, issuance of statutory notice under Ex.P3 and non-payment of cheque amount despite deemed service of notice. The statutory presumption available in favour of the complainant has remained unrebutted.

26. Accordingly, this Court holds that Ex.P1 cheque was issued by the accused towards discharge of a legally enforceable debt of Rs.9,00,000/- and that the accused committed the offence punishable under Section 138 of the Negotiable Instruments Act. Hence, Point Nos.1 and 2 are answered in the Affirmative.

27. 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.9,05,000/-. 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.9,00,000/- 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 05th day of August 2026)

PRAKASH P M

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

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

1. **Witness examined for the Complainant:**

PW.1	:	Sri. D.B. Jayaram

2. **List of documents exhibited for the prosecution:**

Ex.P.1	:	Original Cheque.
Ex.P.1(a)	:	Signature
Ex.P2	:	Bank endorsement
Ex.P3	:	Legal Notice
Ex.P.4	:	Postal receipt
Ex.P.5	:	Postal coverage
Ex.P.5(a)	:	Copy of notice

Ex.P.6 : Postal Track consignment

Ex.P.7 : RTC in Sy.No. 216/P1

3. **Witness Examined for the defence:**

DW-1 : Sri. Sunilkumar J.D

4. **List of documents exhibited for the defence:**

Ex.D1 and 2: RTCs

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(Prakash.P.M)
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