KACM500005182021

IN THE COURT OF THE CIVIL JUDGE & JMFC., N.R.PURA (ITINERARY COURT)

Present : Sri. Jeethu R.S., B.A.L.,LL.M.,
Civil Judge & JMFC., N.R. Pura.

Dated : This the 22nd day of April 2026.

C.C. No. 399/2021

Complainant : Sri. Shivakumar L, S/o Late Laxmana Rao,
Aged about 57 years, R/o Ward No. 1,
T.B. Road, Narasimharajapura Town.

(Represented by Sri. N.V. Sujay, Adv.,)

V/S

Accused : Sri. Harisha, S/o Vittal Rao,
Aged about 42 years, R/o Housing Board Colony, Ward No. 11,
Narasimharajapura Town.

(Represented by Sri. K.S. Santhosh Kumar, Adv.,)

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1.	The offence complained of	U/s.138 of N.I.Act
2.	Date of Registration of private complaint	04-09-2021
3.	The private complaint registered as Criminal case	06-09-2021
4.	Sworn Statement/complainant evidence	04-09-2021

5.	Substance of Accusation Recorded	14-01-2022
6.	Statement of the accused under Section 313 of Cr.P.C. recorded	14-01-2022
7.	Final Order	Convicted
8.	Date of final Order	22-04-2026

Sd/-xxxx22/4/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R.Pura.

JUDGMENT

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

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

It is alleged that the complainant and the accused are known to each other. It is further alleged that the accused has borrowed a sum of Rs.4,00,000/- from the complainant as a hand loan for his urgent needs in the last week of January 2021. It is further alleged that the

accused has assured that the same will be repaid within 5 months without fail. But the accused failed to repay the said amount as agreed by him. After the lapse of 5 months the complainant demanded for repayment of the loan amount. It is further alleged that at that point of time the accused has issued the cheque bearing No.189503, dated 9/7/2021 for a sum of Rs.4,00,000/- drawn on Canara Bank, N.R.Pura Branch in favour of the complainant towards the discharge of the loan amount. Thereafter, the complainant presented the said cheque in question through CDCC Bank, N.R. Pura for encashment. But, the complainant's Bank has returned the above said cheque to the complainant with a memo dated 12/7/2021. Further, in the said memo it is stated that the afore mentioned cheque is dishonoured for the reasons "Funds Insufficient" and "Drawer's signature incomplete/illegible/differs/required" and further the Manager CDCC Bank, N.R. Pura has returned the cheque with another memo dated 14/7/2021 with the same reasons for dishonour of the cheque in question. Thereafter, it is further alleged that the complainant issued legal notice through his Advocate on 29.7.2021 calling upon the accused to repay the cheque amount and the said notice is duly served upon the accused on 2.8.2021. But, the accused has neither replied nor made any payment within the

statutory period. Hence, the complainant filed this private complaint.

3. As per the submissions of the counsel for complainant the affidavit filed by the complainant towards the recording of sworn statement of complainant is treated as affidavit in lieu of examination in chief of PW 1 and got marked Ex.P1 to Ex.P6 and further identified the signature of the accused on the cheque in question as Ex.P1(a) along with the bank endorsement and other documents. Thereafter, cognizance was taken for the offence punishable under Section 138 of NI Act. Further, the private complaint has been registered as criminal case against the accused and summons has been issued to the accused.

4. After the service of summons, the accused has appeared before the court through his counsel and thereupon his counsel got him enlarged on bail. As per the guidelines of Hon'ble Apex Court in Indian Bank Association case cited in AIR 2014 SC 2528, the plea was recorded and the substance of accusation was read over and explained to the accused and the accused pleaded not guilty and claimed to be tried. Further, the statement of accused under Section 313 of Cr.P.C., is also recorded.

At Trial

5. The accused had filed application under Section 145(2) of N.I. Act and it was allowed. But, the accused has not conducted the cross examination of PW 1 during the course of trial. As such, the cross-examination of PW 1 is taken as nil. Thereupon, the matter was posted for defence evidence. But, the accused has not led any defence evidence during the course of trial.

6. Heard both the counsels on merits.

7. The points that arise for my consideration are as under:-

1. Whether the complainant proves that the accused has issued the cheque in question/Ex.P1 towards the discharge of legally enforceable debt and on its presentation, the cheque in question was dishonoured for the reasons “Funds Insufficient” and "Drawer's signature incomplete/illegible/differs/required" and thereupon the accused has failed to repay the cheque amount within the statutory period from the date of service of statutory notice upon him and thereby the accused has committed an offence punishable under section 138 of NI Act beyond all reasonable doubts?

2. What order?

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

Point No.1 : In the Affirmative

Point No.2 : As per the final order, for the following;

REASONS

9. **Point No.1** :- To prove the case of complainant, the complainant himself has examined as PW 1. Further filed affidavit in lieu of examination in chief and got marked Ex.P1 to Ex.P6 and further identified the signature of the accused on the cheque in question as Ex.P1(a). Further, identified the bank endorsements issued by the complainant bank as Ex.P2 and P3. The office copy of the legal statutory notice is produced and got marked as Ex.P4. Postal receipt is marked as Ex.P5, postal acknowledgment is marked as Ex.P6. The PW 1 has reiterated the allegations pleaded in the private complaint.

10. Once the compliance of the conditions under Section 138 of NI Act is made out, a presumption arises in favour of the complainant, that the cheque in question was issued in favour of the complainant by the accused towards the discharge of legally enforceable debt or other liability as per Sections 118 and 139 of NI Act. The presumption contemplated under Section 139 of NI Act is

rebuttable in nature. The accused has not come forward to conduct cross-examination of PW 1 during the course of trial. Further, the accused has even not led any defence evidence to rebut the presumption under Section 139 of NI Act. Therefore, the accused has failed to rebut the presumption available to the complainant under Section 139 of N.I.Act.

11. In spite of sufficient opportunity given to the accused to rebut the presumption that stands in favour of the complainant, the accused has not made any efforts to rebut the presumption either by eliciting the truth from the mouth of complainant/PW1 during the course of cross-examination or by stepping into the witness box.

12. Section 139 of N.I. Act states about the presumption in favour of holder as follows:

> "Sec.139. Presumption in favour of holder. —It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

13. It is relevant to refer the ratio laid down by the Hon'ble Apex Court in T.Vasantha Kumar V/S Vijaya Kumari reported in 2015 (8) SCC 378. In the said judgment the Hon'ble Apex Court has held that there is a presumption under section 139 of N.I. Act that the holder of the cheque received the cheque in question towards the discharge of the debt or other liability. It is for the accused to rebut the said presumption.

14. Thus, in view of the presumption laid down under Section 139 of NI Act, creates the initial obligation on the complainant, that may be discharged with the help of presumptions of law or fact. Unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed facts, no discretion is left with the Court but to draw the statutory conclusion. Thus, in the above case on hand the accused has failed to conduct cross-examination of witness and further has not led any evidence to defend the case of accused. Therefore, the Court is left with no option, except to accept the case of complainant that the accused has borrowed a sum of Rs.4,00,000/- from the complainant as hand loan and in this regard the accused has issued the cheque bearing No.189503, dated 9/7/2021 for a sum of

Rs.4,00,000/- drawn on Canara Bank, Narasimharajapura Branch, towards the discharge of the above said legally recoverable debt. But, on its presentation for encashment it came to be dishonoured for the reasons “Funds Insufficient” and "Drawer's signature incomplete/illegible/differs/required" as per Ex.P2 and 3. Further PW 1 has also relied upon the statutory notice sent to the accused as per Ex.P4 and further relied upon the postal receipt as per Ex.P5 and postal acknowledgment as per Ex.P6, wherein it is clearly mentioned that the statutory notice is duly served upon the accused. Thus, the said allegations made by the complainant in the complaint and in the evidence of PW 1 remained intact as it was not disputed by the accused during the course of trial. But, after the appearance of the accused before the court, he has made the payments to the complainant of Rs. 25,000/- on 17.9.2022, Rs. 25,000/- on 3.2.2023, Rs. 20,000/- on 17.8.2023, Rs. 10,000/- on 16.1.2024 and Rs. 10,000/- on 21.5.2024 in total Rs. 90,000/-.

15. It is relevant to refer the ratio laid down by the Hon’ble Apex Court in Uttam Ram V/S Devinder Singh Hudan reported in 2019 part 10 SCC 287. The relevant portion of the judgment supra is herewith reproduced;

"26. In view of the judgments reported to above, we find that the respondent has not rebutted the presumption of consideration in issuing the cheque on 2.10.2011 inter alia for the following reasons:

1. Statement of the CW3, that he was not an agent of the respondent, has not been challenged by the respondent in the cross examination.

2. The statement of the appellant as CW2 that the cheque was handed over by the respondent personally remains unchallenged.

3. The respondent has not denied even in his statement that the cheque was not issued by him. The cross examination of the witnesses produced by the appellant also does not show that the signatures on the cheque by him have not been disputed.

4. The respondent relies upon entry recorded with the police on 09.09.2011 that the cheque book was lost. However, the respondent has not lodged any FIR in respect of loss of cheque, even after the notice of dishonour of cheque was received by him on 27.10.2011. The mere entry is not proof of loss of cheque as is found by the learned Trial Court itself as it is self-serving report to create evidence to avoid payment of cheque amount.

5. The respondent has not appeared as witness to prove the fact that the cheque book was lost or that cheque was not issued in discharge of any debt or liability.

6. The statement of accused under Section 313 of the Code is only to the effect that the cheque has been misused. There is no stand in the statement that the cheque book was stolen.

7. The statement of accused under Section 313 is not a substantive evidence of defence of the accused but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of accused.

Therefore, there is no evidence to rebut the presumption that the cheque was issued for consideration.

27. Once the agent of the respondent has admitted the settlement of due amount and in absence of any other evidence the Trial Court or the High Court could not dismiss the complaint only on account of discrepancies in the determination of the amount due or oral evidence in the amount due when the written document crystalizes the amount due for which the cheque was issued.

28. The accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the Trial Court and the High Court. Both Courts not only erred in law but also committed perversity when the due amount is said to be disputed only on account of discrepancy in the cartons, packing material or the rate to determine the total liability as if the appellant was proving his debt before the Civil Court. Therefore, it is presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e., the

appellant received the same in discharge of an existing debt. The onus, thereafter, shifts on the accused-appellant to establish a probable defence so as to rebut such a presumption, which onus has not been discharged by the respondent.

29. Learned counsel for the respondent has referred to the judgment reported in M. S. Narayana Menon v. State of Kerala that evidence adduced by the complainant can be relied upon to rebut the presumption of consideration. However, said judgment has no applicability to the facts of the present case as the Trial Court has found that the presumption is not rebutted but still the Trial Court 9 (2006) 6 SCC 39 dismissed the complaint for the reason that the appellant has failed to prove the amount mentioned in the cheque as due amount. Once the cheque is proved to be issued it carries statutory presumption of consideration. Then the onus is on the respondent to disprove the presumption at which the respondent has miserably failed.

30. In Kumar Exports evidence to rebut the presumption was led and accepted by the Court. In these circumstances, it was held that the burden shifts back to the complainant and the presumption under the Act will not again come to his rescue. However, in the present case, the presumption of consideration has not been rebutted by the respondent even on the basis of the evidence laid by the appellant. The difference in the number of cartons supplied or the rate charged is not relevant when the accounts were settled in writing to

rebut the presumption of consideration of issuance of a cheque.

31.In Vijay v. Laxman and another this Court found grave discrepancies in the case of the complainant and that no case is made out for when the High Court had set aside the conviction on the basis of clear evidence giving rise to the perverse findings.

32. Learned counsel appearing for the respondent also referred to M. S. Narayana Menon and K. Prakashan v. P. K. Surenderan that if two views are possible, the appellate court shall not reverse 10 (2013) 3 SCC 86 11 (2008) 1 SCC 258 a judgment of acquittal only because another view is possible to be taken. Learned counsel also relies upon a judgment reported as John K. Abraham v. Simon C. Abraham that mere fact that the statutory notice was not replied cannot prejudice to the case of the respondent. We do not find any merit in the arguments raised by the learned counsel for the respondent. In fact, the findings recorded by the courts below are total misreading of the statutory provisions more so when the respondent has not led any evidence to rebut the presumption of consideration. Cross-examination on the prosecution witness is not sufficient to rebut the presumption of consideration. Mere discrepancies in the statement in respect of the cartons, trays or the packing material or the rate charged will not rebut the statutory presumption which is proved by CW3 Prem Chand.

33. The conclusion drawn by the Trial Court and the High Court to acquit the respondent is not only illegal but being perverse is totally unsustainable in law. Before concluding, we would like to put on record that Ms. Mathew has ably assisted this Court in canvassing that the order passed by the High Court does not warrant any interference in the present appeal against acquittal."

16. Now, coming back to the case on hand, the accused in the above case has neither given reply notice to the complainant after the receipt of the statutory notice to initially demonstrate his defence in the offence punishable under section 138 of N.I. Act. Even during the course of trial the accused has failed to conduct cross-examination of PW 1 and also not led any defence evidence to rebut the presumption under section 139 of N.I. Act. Further, the accused has appeared before the court and made part payment in favour of the complainant shows that an inference can be drawn against the accused that the accused has issued the cheque in question towards the discharge of existing debt.

17. Further, the Hon'ble Apex Court has specifically laid down the ratio in Rangappa Vs. Mohan Judgment reported in AIR 2010 S.C. 1898 Rangappa Vs. Sri Mohan, that the initial presumption is always

in favour of complainant that the cheque is issued in favour of complainant towards the discharge of legally enforceable debt. It is for the accused to disprove the presumption not by mere explanation, but proof of explanation has to be offered. But, in the above case, the accused has failed to offer any evidence to disbelieve the case of complainant. Thus, the evidence of the complainant has remained unchallenged as it is not subjected to cross-examination by the accused during the course of trial.

18. The complainant has established its case by cogent oral and documentary evidence. The presumption under Section 139 of NI Act is not rebutted by the accused during the course of trial as explained by the Hon'ble Apex Court in Rangappa vs. Mohan case. Hence, I am of the considered opinion that accused is liable to be convicted for the offence punishable under Section 138 of N.I. Act. Accordingly, point No.1 is answered in the Affirmative.

19. ***Point No.2*** : For the aforementioned reasons this Court proceeds to pass the following :

The Judgment and order on sentence is ready. The proposed sentence is fine only. The evidence on record is sufficient to determine the quantum of punishment. The presence of accused is necessary on the date of judgment only to give an opportunity to him to submit his say on the quantum of punishment. In the present case, hearing of the accused on quantum of punishment is not required. Pronouncement of Judgment and order of sentence in the absence of the accused in no-way prejudices the rights of the accused or causes injustice to him. Hence, considering the Provisions of Section 353(6), (7) of Cr.P.C., the Judgment and order of sentence can be pronounced in the absence of the accused.

ORDER

The accused is found guilty for the offence punishable under section 138 of N.I Act.

Acting under section 255(2) of Cr.P.C. the accused is hereby convicted for the offence punishable under section 138 of N.I Act. During the pendency of the above trial the accused has paid Rs.25,000/- on 17.9.2022, Rs. 25,000/- on 3.2.2023, Rs. 20,000/- on 17.8.2023, Rs. 10,000/- on 16.1.2024 and Rs. 10,000/- on 21.5.2024 in total Rs.90,000/- to the complainant out of Rs. 4,00,000/- i.e. cheque amount. Further, the accused is bound to

pay the remaining cheque amount of Rs. 3,10,000/-. Therefore, the accused is sentenced to pay fine of Rs.3,15,000/-.

Out of the said fine amount, Rs.3,10,000/- shall be payable to the complainant as compensation as per section 357 of Cr.P.C., remaining amount of Rs.5,000/- shall be payable to the State as the fine amount.

As default sentence, the accused shall undergo simple imprisonment for a period of one year.

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

The office is hereby directed to issue the free copy of the judgment to accused.

(Dictation given to the Stenographer directly on system, typed by her, then corrected and then pronounced by me in the open court on this the 22nd day of April, 2026)

Sd/-xxxx22/4/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R. Pura.

A N N E X U R E

List of witnesses examined for the complainant:

PW 1 : Shivakumar L.

List of witnesses examined for the accused:

- NIL -

List of documents marked for the complainant:

Ex.P1 : Original cheque bearing No. 189503, dated 9.7.2021
Ex.P1(a) : Signature of accused
Ex.P2 & 3 : 2 Endorsements
Ex.P4 : Office copy of the legal notice
Ex.P5 : Postal receipt
Ex.P6 : Postal acknowledgment

List of documents marked for the accused:

- NIL -

JEETHU R S

Digitally signed by JEETHU R S
Date: 2026.04.28 16:21:36 +0530

Sd/-xxxx22/4/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R. Pura.